

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) JUNE 24, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 41
 DEFENDANT.)
) PAGES 7557 - 7733

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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GOVERNMENT'S REBUTTAL ARGUMENT BY MR. BOSTIC P. 7573

1 SAN JOSE, CALIFORNIA

JUNE 24, 2022

2 P R O C E E D I N G S

09:05AM 3 (COURT CONVENED AT 9:05 A.M.)

09:05AM 4 (JURY OUT AT 9:05 A.M.)

09:05AM 5 THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU
09:05AM 6 AGAIN FOR YOUR COURTESY.

09:05AM 7 WE'RE BACK ON THE RECORD.

09:05AM 8 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:05AM 9 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

09:05AM 10 I JUST WANTED TO CHECK WITH COUNSEL BEFORE WE BRING THE
09:05AM 11 JURY IN, IF THERE'S ANYTHING EITHER SIDE WANTED TO TALK ABOUT
09:05AM 12 BEFORE WE BRING OUR JURY IN?

09:05AM 13 MR. COOPERSMITH: YOUR HONOR, IF WE COULD BRIEFLY
09:05AM 14 TALK ABOUT THE JUROR NUMBER 10 AND THE --

09:05AM 15 THE COURT: YES. THIS IS JUROR NUMBER 10, YES.

09:05AM 16 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:05AM 17 AND SO I GUESS A COUPLE OF THINGS.

09:05AM 18 FIRST OF ALL, IF SHE'S GOING TO BE -- IT SOUNDS LIKE SHE
09:05AM 19 IS GOING TO START HER VACATION ON THIS SUNDAY, THE 26TH OF
09:05AM 20 JUNE, THEN MAYBE THIS IS OBVIOUS, BUT THEN SHE WOULD NOT -- IF
09:05AM 21 THERE'S DELIBERATION TIME TODAY, IT SEEMS LIKE SHE WOULD NOT BE
09:05AM 22 ABLE TO PARTICIPATE IN THOSE DELIBERATIONS BECAUSE OTHERWISE
09:05AM 23 THEY WOULD HAVE TO START AGAIN, ASSUMING THEY DIDN'T REACH A
09:06AM 24 VERDICT THIS AFTERNOON. THAT'S ONE THING.

09:06AM 25 AND THEN SECOND, WE THOUGHT MORE ABOUT THIS QUESTION OF

09:06AM 1 WHETHER JUROR NUMBER 10 COULD BE, JUST IN CASE IT'S EVER NEEDED
09:06AM 2 AS A FAILSAFE AS WELL, BASICALLY BEING DESIGNATED AS AN
09:06AM 3 ALTERNATE. SO IF SOMETHING WENT HAYWIRE, WHEN SHE GOT BACK
09:06AM 4 FROM HER VACATION, THE JURY COULD START AGAIN, IF THERE'S ANY
09:06AM 5 NEED TO DO THAT. IT PROBABLY WOULDN'T BE NECESSARY, BUT YOU
09:06AM 6 NEVER KNOW.

09:06AM 7 WE THINK THAT -- WE DO SUPPORT THAT PLAN. MR. BALWANI IS
09:06AM 8 PREPARED TO WAIVE ANY OBJECTION TO THAT. HE WOULD DO THAT ON
09:06AM 9 THE RECORD.

09:06AM 10 THE COURT: OKAY.

09:06AM 11 MR. COOPERSMITH: I WANT TO BE CAUTIOUS HERE BECAUSE
09:06AM 12 IT'S BEEN A LONG TRIAL, THE COURT AND THE PARTIES HAVE WORKED
09:06AM 13 VERY HARD, AND WE WANT TO MAKE SURE EVERYTHING IS IN PLACE TO
09:06AM 14 GET TO THE CONCLUSION HERE.

09:06AM 15 THE COURT: SURE. OKAY.

09:06AM 16 MR. SCHENK.

09:06AM 17 MR. SCHENK: YES, YOUR HONOR. THANK YOU.

09:06AM 18 I HAVE THOUGHTS ON BOTH OF THOSE SUBJECTS. THE FIRST, I
09:06AM 19 THINK WE NEED TO WAIT AND SEE WHAT TIME THE JURY GETS THE CASE
09:07AM 20 TO DECIDE WHEN IT WOULD BE APPROPRIATE TO EXCUSE THIS JUROR.

09:07AM 21 I THINK IF THEY HAVE FOUR HOURS OF DELIBERATION TIME
09:07AM 22 TODAY, WE SHOULD CONSIDER ALLOWING THIS JUROR TO PARTICIPATE IN
09:07AM 23 THE DELIBERATIONS.

09:07AM 24 BUT, YES, OF COURSE IF IT'S 3:00 OR 4:00 O'CLOCK, AT SOME
09:07AM 25 POINT IT DOESN'T MAKE SENSE WE EXCUSE HER AND PROMOTE THE

09:07AM 1 ALTERNATE, AND I THINK WE SHOULD JUST HOLD ON THAT PARTICULAR
09:07AM 2 DECISION UNTIL WE HAVE A SENSE OF HOW MUCH DELIBERATION TIME
09:07AM 3 THE JURY WOULD HAVE THIS AFTERNOON.

09:07AM 4 ON THE QUESTION OF NOT EXCUSING THIS JUROR BUT CONVERTING
09:07AM 5 HER TO AN ALTERNATE, I WAS UNABLE TO FIND ANY CASES THAT
09:07AM 6 ADDRESS THIS ISSUE. I DON'T THINK THAT'S SURPRISING.

09:07AM 7 IF YOU LOOK AT RULE 24, THOUGH, WHICH IS THE RULE THAT
09:07AM 8 GOVERNS THE IMPANELMENT OF ALTERNATES AND TRIAL JURORS --

09:07AM 9 THE COURT: FEDERAL RULES OF CRIMINAL PROCEDURE 24.

09:07AM 10 MR. SCHENK: YES, YOUR HONOR.

09:07AM 11 IT INDICATES THERE'S A MAXIMUM OF SIX ALTERNATES THAT THE
09:08AM 12 COURT CAN SELECT AND IMPANEL, AND THEN IT SAYS THEY SHOULD BE
09:08AM 13 ELEVATED IN ORDER.

09:08AM 14 IF WE CONVERT THIS JUROR TO ALTERNATE STATUS, SHE WOULD BE
09:08AM 15 OUR SEVENTH ALTERNATE. SO I HAVE A CONCERN THAT THE RULES
09:08AM 16 DON'T CONTEMPLATE THIS NUMBER OF ALTERNATES THROUGHOUT THE
09:08AM 17 COURSE OF THE TRIAL.

09:08AM 18 THE RULES ALSO SUGGEST THAT ONCE THE COURT SETS THE ORDER
09:08AM 19 OF ALTERNATES, THEY GET ELEVATED IN THAT ORDER IN THIS TRIAL AS
09:08AM 20 ONE THROUGH SIX, AND CONVERTING AN INDIVIDUAL JUROR AT THIS
09:08AM 21 STAGE TO ALTERNATE STATUS WOULD ADD HER, PRESUMABLY, TO THE END
09:08AM 22 OF THAT LINE, BUT ALSO THAT IS NOT SOMETHING CONTEMPLATED BY
09:08AM 23 THE RULES.

09:08AM 24 AND I APPRECIATE THE DEFENDANT'S WILLINGNESS TO WAIVE HIS
09:08AM 25 RIGHTS TO THE EXTENT THAT THE DEFENDANT HAS PARTICULAR RIGHTS

09:08AM 1 UNDER RULE 24. I REMAIN A LITTLE BIT CONCERNED THAT THIS IS
09:08AM 2 NOT SOMETHING THAT IS CONTEMPLATED BY THE RULES. AND BECAUSE
09:08AM 3 WE'RE TALKING ABOUT TAKING THIS STEP ONCE THE JURY HAS THE
09:09AM 4 CASE, I THINK THAT THE RISK IS SIGNIFICANTLY LESSENED AT THAT
09:09AM 5 POINT THAT WE WON'T HAVE ENOUGH JURORS TO FINISH THE TRIAL.

09:09AM 6 WE STILL HAVE ONE ALTERNATE LEFT, AND AS THE COURT KNOWS,
09:09AM 7 WE CAN GO DOWN TO 11 ONCE DELIBERATIONS HAVE BEGUN. SO WE HAVE
09:09AM 8 TWO EXTRA JURORS ONCE THE DELIBERATIONS BEGIN EVEN IF WE EXCUSE
09:09AM 9 THIS JUROR AND DO NOT SAVE HER AS AN ALTERNATE.

09:09AM 10 AND IN LIGHT OF THE LACK OF CLARITY IN CASE LAW ON THIS
09:09AM 11 ISSUE AND IN LIGHT OF THE TEXT OF THE RULE, I THINK THE SAFER
09:09AM 12 APPROACH IS TO EXCUSE THE JUROR AND NOT CONVERT HER TO
09:09AM 13 ALTERNATE STATUS.

09:09AM 14 THE COURT: ALL RIGHT. THANK YOU.

09:09AM 15 MR. COOPERSMITH: AND, YOUR HONOR, I DON'T DISAGREE
09:09AM 16 WITH MR. SCHENK THAT IT'S NOT SOMETHING THAT IS DIRECTLY
09:09AM 17 CONTEMPLATED BY RULE 24. I THINK MR. SCHENK IS READING THAT
09:09AM 18 CORRECTLY.

09:09AM 19 THE CONCERN I HAVE, THOUGH, IS TO GO DOWN TO 11 JURORS, IF
09:09AM 20 IT EVER CAME TO THAT, THAT IS DONE WITH GOOD CAUSE. AND I
09:10AM 21 THINK THAT IF WE DIDN'T TAKE THIS STEP, WHICH IS I THINK A
09:10AM 22 PRUDENT STEP OF DESIGNATING THIS JUROR AS AN ALTERNATE,
09:10AM 23 OBVIOUSLY WITH MR. BALWANI'S CONSENT AND WAIVER, THEN AT THE
09:10AM 24 POINT WHERE IF IT EVER HAPPENED AND WE WOULD HAVE TO GO DOWN TO
09:10AM 25 11, WE WOULD HAVE SOME SERIOUS ISSUES OF GOING DOWN TO 11

09:10AM 1 BECAUSE WE THINK THE PREFERENCE IS THE CASE TO BE DECIDED BY 12
09:10AM 2 JURORS.

09:10AM 3 WE THINK IT'S A PRUDENT STEP. WE DON'T KNOW WHAT HARM
09:10AM 4 COULD BE DONE, ESPECIALLY WITH A WAIVER BY THE DEFENDANT. AND
09:10AM 5 I DON'T THINK IT CREATES AN APPELLATE ISSUE OR ANYTHING OF THAT
09:10AM 6 NATURE.

09:10AM 7 THAT'S OUR REQUEST.

09:10AM 8 SWITCHING TO THE JURY DELIBERATIONS. OF COURSE IT'S
09:10AM 9 ALWAYS POSSIBLE THAT THE JURY WILL HAVE SOME HOURS IN THIS
09:10AM 10 AFTERNOON TODAY TO DELIBERATE AND COME UP WITH A QUICK VERDICT.
09:10AM 11 THAT'S ALWAYS POSSIBLE.

09:10AM 12 I JUST DON'T THINK THAT IT'S RIGHT TO START THAT PROCESS
09:10AM 13 WITH A JUROR WHO WE KNOW WON'T BE AVAILABLE AFTER THIS
09:10AM 14 AFTERNOON.

09:10AM 15 THE COURT: SHOULD WE EXCUSE HER NOW?

09:10AM 16 MR. COOPERSMITH: WELL, EXCUSING HER AND MAKING HER
09:11AM 17 AN ALTERNATE, WHICH MEANS SHE WOULD HAVE TO SIT.

09:11AM 18 THE COURT: WELL, I WASN'T TALKING ABOUT THAT. I
09:11AM 19 WAS SAYING SHOULD WE EXCUSE HER NOW KNOWING THAT SHE WON'T BE
09:11AM 20 AVAILABLE?

09:11AM 21 I'LL ANSWER MY OWN QUESTION. NO, I DON'T THINK WE SHOULD.
09:11AM 22 I DO THINK -- PARDON ME FOR INTERRUPTING YOU, MR. COOPERSMITH,
09:11AM 23 BUT I DO THINK I CAPTURE THE SENTIMENT.

09:11AM 24 MR. COOPERSMITH: SURE.

09:11AM 25 THE COURT: AND IT'S A VERY NOVEL SITUATION, ONE OF,

09:11AM 1 I THINK, FIRST IMPRESSION FOR ALL OF US.

09:11AM 2 I APPRECIATE THE SUGGESTION. IT'S A CREATIVE ONE.

09:11AM 3 I DON'T BELIEVE THAT YOUR SUGGESTION WOULD CREATE ANY
09:11AM 4 STRUCTURAL ERROR, I DON'T SEE THAT AS A STRUCTURAL ISSUE, BUT
09:11AM 5 NONETHELESS IT'S ONE THAT IS -- I DO HAVE SOME RETICENCE TO
09:11AM 6 PROCEED. SHE'S A SEATED JUROR NOW AND -- AND LET ME JUST
09:11AM 7 STATE, IF WE'RE GOING TO ANY OF THIS CHANGE, I WOULD PREFER TO
09:11AM 8 DO IT BEFORE THE JURY GETS THE CASE. I JUST THINK THAT SHE'S A
09:11AM 9 SEATED JUROR NOW, AND TO CHANGE HER ROLE IN SOME WAY I THINK IS
09:12AM 10 A LITTLE DISRUPTIVE. SO I'M NOT INCLINED TO DO THAT, TO CHANGE
09:12AM 11 HER OR ADVANCE HER FROM SEATED JUROR TO ALTERNATE STATUS.

09:12AM 12 I RECOGNIZE THE PATH HERE IS -- WE'RE DOWN TO TWO
09:12AM 13 ALTERNATES, AND THE PATH HERE IS TO CONTINUE TO PROVIDE
09:12AM 14 INTEGRITY TO THE WHOLE PROCESS WITH A FULSOME JURY. AND I
09:12AM 15 APPRECIATE THAT, AND I JOIN IN EVERYONE'S SENTIMENT TO
09:12AM 16 ACCOMPLISH THAT, PARTICULARLY WHEN WE'RE SO CLOSE AND THE JURY
09:12AM 17 IS SO CLOSE TO HAVING THE CASE.

09:12AM 18 WE DO HAVE A FULL COMPLEMENT NOW. WE HAVE 12 JURORS
09:12AM 19 SEATED WHO HEAR THE CASE. WE RECOGNIZE THAT THIS JUROR HAS
09:12AM 20 TOLD US OF TRAVEL PLANS THAT MAKE IT SUCH THAT SHE'S
09:12AM 21 UNAVAILABLE FOR THIS TIME PERIOD.

09:12AM 22 OF COURSE, THE UNKNOWN WAS OUR COVID SITUATION WHICH
09:12AM 23 DISRUPTED THIS CASE FOR AT LEAST TWO WEEKS, IF NOT MORE, AND
09:13AM 24 OTHER INTERRUPTIONS AND THAT CAUSED SOME CHAOS WITH OUR
09:13AM 25 SCHEDULE, AND WE JUST HAD TO WORK AROUND IT.

09:13AM 1 BUT AS I SEE IT NOW, WE HAVE 12. WE HAVE ALTERNATES WHO
09:13AM 2 ARE AVAILABLE TO CAUSE RELIEF SHOULD THAT BE NEEDED, AND MY
09:13AM 3 SENSE IS TO PROCEED AS WE GO FORWARD.

09:13AM 4 MY HOPE IS THAT THE JURY WILL GET THE CASE TODAY, THIS
09:13AM 5 AFTERNOON SOME TIME.

09:13AM 6 BEFORE THEY, THE JURY, LEAVES, AND THEY'LL TELL US WHAT
09:13AM 7 THEIR SCHEDULE IS THOUGH, WE SHOULD TAKE CARE OF JUROR NUMBER
09:13AM 8 10'S ISSUE. AND I'D LIKE TO BRING HER IN. PERHAPS YOU CAN
09:13AM 9 GIVE THIS SOME THOUGHT, BUT BEFORE THE END OF THE DAY, BEFORE
09:13AM 10 THE JURY LEAVES, SHE SHOULD KNOW WHETHER OR NOT SHE'S UNDER
09:13AM 11 COURT ORDER TO COME BACK NEXT WEEK OR WHETHER SHE CAN TAKE THE
09:13AM 12 TIME THAT SHE HAS PREVIOUSLY PLANNED. AND I THINK SHE HASN'T
09:14AM 13 TOLD US ANYTHING THAT HER PLANS HAVE CHANGED. SO I'D LIKE TO
09:14AM 14 BRING HER IN BEFORE THAT.

09:14AM 15 IF THAT -- IF IT OCCURS THAT WE'RE GOING TO REPLACE JUROR
09:14AM 16 NUMBER 10 WITH AN ALTERNATE, WE'LL DO THAT NEXT WEEK, AND
09:14AM 17 FORMALLY REPLACE. WE'LL RELIEVE HER AND FORMALLY REPLACE AND
09:14AM 18 INFORM THE ALTERNATE, AND I'LL HAVE TO INSTRUCT THE JURY AGAIN
09:14AM 19 ABOUT STARTING THEIR DELIBERATIONS ANEW IF THEY HAVEN'T
09:14AM 20 REACHED --

09:14AM 21 MR. COOPERSMITH: RIGHT, YOUR HONOR. I UNDERSTAND
09:14AM 22 ALL OF THAT. THANK YOU.

09:14AM 23 THE THING THAT -- OUR POSITION IS THAT PUTTING ASIDE THE
09:14AM 24 SWITCHING HER TO ALTERNATE, SO THAT'S NOT GOING TO HAPPEN,
09:14AM 25 THAT'S THE COURT'S DECISION.

09:14AM 1 THE COURT: RIGHT.

09:14AM 2 MR. COOPERSMITH: BUT WITH REGARD TO DELIBERATIONS,
09:14AM 3 OUR POSITION IS THAT IF WE KNOW -- IF THE JURORS SHOULD BE
09:14AM 4 SPOKEN TO BEFORE THE JURY STARTS DELIBERATION, SO AFTER THE
09:14AM 5 REBUTTAL THERE SHOULD BE AN INQUIRY.

09:14AM 6 IF SHE'S GOING ON HER TRIP AND THE COURT IS NOT GOING TO
09:15AM 7 RELIEVE HER OF HER OBLIGATIONS -- I MEAN IS GOING TO RELIEVE
09:15AM 8 HER AND ALLOW HER TO GO ON HER VACATION, THEN AT THAT POINT WE
09:15AM 9 THINK THE JURY SHOULD NOT BEGIN THE DELIBERATIONS WITH THE
09:15AM 10 JURY. THE ALTERNATE SHOULD BE SLOTTED IN RIGHT AWAY, AND THEN
09:15AM 11 DELIBERATIONS COULD START SO THEY WOULDN'T HAVE TO START ANEW,
09:15AM 12 ASSUMING THERE'S NO VERDICT TODAY.

09:15AM 13 WE'RE VERY CONCERNED THAT A JUROR WHO IS NOW STARTING
09:15AM 14 DELIBERATIONS, THERE'S SOMEHOW PRESSURE TO COME UP WITH
09:15AM 15 DECISIONS AS SHE'S THERE, RIGHT?

09:15AM 16 AND IT SEEMS LIKE FOR A FEW HOURS, I THINK ALL OF OUR
09:15AM 17 EXPERIENCES WITH COMPLEX CASES, NO QUESTION IT'S POSSIBLE THAT
09:15AM 18 THE JURY COMES BACK VERY QUICKLY, BUT USUALLY THAT'S NOT THE
09:15AM 19 CASE IN A LONG TRIAL LIKE THIS.

09:15AM 20 AND I JUST THINK IT WOULD BE MUCH BETTER IF THE COURT
09:15AM 21 ADDRESSES THIS ONE JUROR, NUMBER 10, IF SHE'S GOING TO GO ON
09:15AM 22 HER VACATION THEN SHE'S EXCUSED BEFORE DELIBERATIONS START, AND
09:15AM 23 THEN THERE'S NO NEED TO RESTART DELIBERATIONS.

09:15AM 24 THE COURT: SO THAT WOULD MEAN THAT SHE WOULD HAVE
09:15AM 25 SAT THROUGH THE ENTIRETY OF THE TRIAL -- AND THERE WILL BE SOME

09:15AM 1 TIME FOR DELIBERATIONS TODAY. AND YOU'RE SAYING WE SHOULD
09:16AM 2 DISENFRANCHISE HER FROM THAT JUST BECAUSE WE KNOW NEXT WEEK
09:16AM 3 SHE'S NOT AVAILABLE?

09:16AM 4 MR. COOPERSMITH: RIGHT.

09:16AM 5 THE COURT: MR. SCHENK.

09:16AM 6 MR. SCHENK: YOUR HONOR, I DISAGREE WITH THAT
09:16AM 7 APPROACH. I THINK THAT THIS JUROR SAT THROUGH THE TRIAL AND
09:16AM 8 ALL OF THE ARGUMENTS AS THE COURT JUST NOTED, AND THERE
09:16AM 9 PRESUMABLY WILL BE SEVERAL HOURS OF DELIBERATION TIME FOR THE
09:16AM 10 JURY THIS AFTERNOON.

09:16AM 11 AND IT PRESUPPOSES THE AMOUNT OF TIME THE JURY WILL NEED
09:16AM 12 TO SAY IT ISN'T WORTH IT TO HAVE HER PARTICIPATE IN ONE PART OF
09:16AM 13 THE PROCESS THAT SHE QUALIFIED FOR, AND THAT IS THE
09:16AM 14 DELIBERATIONS.

09:16AM 15 AND IT'S PREMATURE TO EXCUSE HER AT NOON OR 1:00 OR
09:16AM 16 WHATEVER TIME THE CASE EVENTUALLY GETS TO THE JURY JUST BECAUSE
09:16AM 17 WE SEVERAL WEEKS AGO HEARD SHE HAD A VACATION.

09:16AM 18 THE COURT: ALL RIGHT. WELL, THANK YOU. ANYTHING
09:16AM 19 FURTHER?

09:16AM 20 MR. COOPERSMITH: NO. WE UNDERSTAND THE
09:16AM 21 GOVERNMENT'S POSITION. WE OBJECT TO THAT. WE THINK THE JUROR
09:16AM 22 SHOULD BE EXCUSED. WE THINK IT CREATES UNDUE PRESSURE FOR THE
09:16AM 23 JURY TO REACH A QUICKER VERDICT WHEN THEY KNOW ONE OF THEIR
09:17AM 24 COLLEAGUES IS GOING TO BE NOT AVAILABLE AFTER TODAY.

09:17AM 25 SO I THINK OUR POSITION IS CLEAR, AND THAT'S HOW WE WOULD

09:17AM 1 LIKE TO DO IT.

09:17AM 2 THE COURT: SURE. NO, I APPRECIATE THAT. YOU KNOW,
09:17AM 3 WE DON'T KNOW WHAT THE VERDICT COULD BE. YOU MIGHT -- YOU
09:17AM 4 MIGHT GET A QUICK VERDICT THAT YOU'RE VERY HAPPY WITH.

09:17AM 5 MR. COOPERSMITH: THAT COULD HAPPEN, RIGHT.

09:17AM 6 THE COURT: AND I DON'T MEAN TO BE FLIP, BUT I DO
09:17AM 7 THINK THAT THE -- THIS JUROR HAS SAT THROUGH THE ENTIRETY OF
09:17AM 8 THE CASE, SHE'S HEARD THE EVIDENCE, AND -- BUT FOR THE
09:17AM 9 REBUTTAL, SHE'S HEARD ALL OF THE ARGUMENTS IN THE CASE.

09:17AM 10 THERE WILL BE TIME FOR DELIBERATION. I JUST THINK IT'S --
09:17AM 11 I APPRECIATE THE FACT THAT, MR. COOPERSMITH, YOUR OBSERVATION
09:17AM 12 IS THAT THE JURY MAY, KNOWING THAT SHE IS -- HAS TIME
09:17AM 13 CONSTRAINTS AND WON'T BE HERE NEXT WEEK, THAT MIGHT INFLUENCE
09:17AM 14 THEIR DISCUSSIONS AND PERHAPS EVEN THEIR DECISIONS.

09:17AM 15 BUT PLEASE RECALL THAT THE JURY ALSO KNOWS THAT THERE ARE
09:17AM 16 TWO ALTERNATES. THEY WERE HERE. I IDENTIFIED THEM AS SUCH.
09:18AM 17 THEY KNOW THAT THERE ARE ALTERNATES HERE. I'VE TALKED ABOUT
09:18AM 18 THAT PROCESS, WHAT HAPPENS WHEN THERE'S REPLACEMENT DURING THE
09:18AM 19 VOIR DIRE AND EXPLAINED THAT TO THEM.

09:18AM 20 SO MY SENSE IS THAT THE JURY IS AWARE THAT ALTERNATES
09:18AM 21 EXIST FOR A REASON. THE LOU GEHRIG ANALOGY, YOU KNOW,
09:18AM 22 WALLY PIPP HAD A HEADACHE, AND HE NEVER PLAYED FOR THE YANKEES
09:18AM 23 AGAIN AND LOU GEHRIG DID. THAT'S WHAT THEY'RE THERE FOR. I
09:18AM 24 APPRECIATE YOUR COMMENTS.

09:18AM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR. WE

09:18AM 1 UNDERSTAND THE COURT'S DECISION.

09:18AM 2 THE OTHER REQUEST I WOULD HAVE, IF THAT'S -- SINCE THAT'S
09:18AM 3 THE WAY IT'S GOING TO BE, IS THAT I THINK THE JURY SHOULD BE
09:18AM 4 TOLD THAT THEY HAVE THIS AFTERNOON TO DELIBERATE, AND ONE OF
09:18AM 5 THEIR COLLEAGUES WILL NOT BE AVAILABLE, AND WE HAVE ALTERNATES,
09:18AM 6 AND THAT THEY -- IF THEY DON'T REACH A VERDICT TODAY, THAT'S
09:18AM 7 THEIR PREROGATIVE. THE NEXT TIME THEY MEET ON MONDAY, THERE
09:19AM 8 WOULD BE DELIBERATIONS STARTING ANEW BECAUSE I WANT TO MAKE
09:19AM 9 SURE THAT THEY UNDERSTAND HOW THE PROCESS IS GOING TO WORK.

09:19AM 10 THE COURT: YOU KNOW, MY CONCERN ABOUT THAT IS THAT
09:19AM 11 IT SEEMS TO HAVE THE COURT ENTER THEIR DELIBERATION SCHEDULE
09:19AM 12 AND TRY TO DIRECT THEM IN SOME MANNER, WHICH I THINK IS
09:19AM 13 INAPPROPRIATE TO DO. I JUST DON'T WANT TO INFLUENCE OR HAVE A
09:19AM 14 SUGGESTION THAT THE COURT HAS AN OPINION OF HOW THEY SHOULD
09:19AM 15 DELIBERATE.

09:19AM 16 MR. SCHENK.

09:19AM 17 MR. SCHENK: I THINK YOU SHOULD READ THE JURY
09:19AM 18 INSTRUCTIONS THAT THE PARTIES HAVE ALREADY ARGUED OVER AND THAT
09:19AM 19 THE COURT HAS APPROVED AND IS PLANNING TO READ TO THE JURY.

09:19AM 20 THE COURT: YES.

09:19AM 21 MR. COOPERSMITH: ONE LAST THING, YOUR HONOR.

09:19AM 22 I DON'T KNOW WHETHER THE JUROR NUMBER 10 HAS ALREADY TOLD
09:19AM 23 HER COLLEAGUES THAT SHE'S GOING ON VACATION, BUT THERE'S A
09:19AM 24 CHANCE THAT SHE HASN'T. AND AT A MINIMUM, I THINK SHE SHOULD
09:20AM 25 NOT -- SHE SHOULD BE INSTRUCTED INDIVIDUALLY NOT TO REVEAL THAT

09:20AM 1 SO THAT NO ONE HAS LIKE THIS SENSE OF TIME PRESSURE BECAUSE
09:20AM 2 THEY'RE GOING TO LOSE HER AFTER TODAY.

09:20AM 3 AND I'M JUST VERY, VERY CONCERNED, AS YOU CAN SEE, FROM MY
09:20AM 4 VARIOUS SUGGESTIONS ABOUT THIS PRESSURE ISSUE.

09:20AM 5 MR. SCHENK: YOUR HONOR, THERE'S ANOTHER JUROR WHO
09:20AM 6 HAS SOME TRAVEL PLANS. I THINK IT'S NEXT WEEK OR THE WEEK
09:20AM 7 AFTER. I'M LOSING MY WEEKS AT THIS POINT.

09:20AM 8 ARE WE ALSO GOING TO INSTRUCT THAT JUROR THAT THAT JUROR
09:20AM 9 SHOULD NOT REVEAL TRAVEL PLANS BECAUSE THE JURY IS GOING TO
09:20AM 10 FEEL THAT THEY HAVE TO REACH A VERDICT BY WEDNESDAY BECAUSE THE
09:20AM 11 JUROR BECOMES UNAVAILABLE ON THURSDAY.

09:20AM 12 IT'S NOT NECESSARY -- THE COURT TELLS THE JURY ABOUT THE
09:20AM 13 TOPICS THAT THEY'RE NOT ALLOWED TO DISCUSS, THAT IS,
09:20AM 14 DELIBERATIONS RELATED TO THE CASE UNTIL THEY GET THE CASE.

09:20AM 15 BUT THE COURT DOES NOT GAG OTHER TOPICS LIKE PERSONAL
09:20AM 16 UPCOMING TRAVEL PLANS, AND IT IS NOT NECESSARY TO BEGIN SUCH A
09:20AM 17 PRACTICE.

09:20AM 18 THE COURT: THANK YOU. ANYTHING FURTHER,
09:20AM 19 MR. COOPERSMITH?

09:20AM 20 MR. COOPERSMITH: NO, YOUR HONOR.

09:20AM 21 THE COURT: OKAY. I THINK WE'VE BEEN WITH THIS JURY
09:21AM 22 SINCE MARCH -- HAS IT BEEN SINCE MARCH? I THINK WE HAVE
09:21AM 23 RECOGNIZED THEIR HARD WORK AND THEIR DILIGENCE. I'VE USED THE
09:21AM 24 WORD "FIDELITY" TO THE ADMONITION, AND THEY'VE DONE THAT IN
09:21AM 25 VERY ARDUOUS CIRCUMSTANCES, AND THEY CONTINUE TO DO THAT. I

09:21AM 1 THINK IT'S A GOOD JURY. THEY'VE LISTENED ATTENDANTLY, AND
09:21AM 2 THEY'VE PUT PEN TO PAPER DURING THE TRIAL, AND THEY'VE TAKEN
09:21AM 3 NOTES, I'VE OBSERVED THAT. I THINK THEY'RE UP TO THE TASK, AND
09:21AM 4 THEY'RE RESPONSIBLE, AND I HAVE GREAT CONFIDENCE THAT THEY'LL
09:21AM 5 CONTINUE TO CARRY OUT THEIR DUTIES AS JURORS IN THIS CASE.

09:21AM 6 SO I DON'T THINK IT'S NECESSARY TO PARSE THEM OUT AND MAKE
09:21AM 7 COMMENT LIKE YOU'RE SUGGESTING. I JUST THINK THAT THAT
09:21AM 8 INTERFERES INTO THE DELIBERATIVE PROCESS IN AN INAPPROPRIATE
09:21AM 9 WAY FOR THE COURT.

09:21AM 10 BUT I APPRECIATE IT. OKAY.
09:21AM 11 ANYTHING?

09:21AM 12 MR. COOPERSMITH: NO, YOUR HONOR.

09:21AM 13 MR. SCHENK: NOTHING FURTHER.

09:21AM 14 MR. COOPERSMITH: NOTHING FURTHER.

09:21AM 15 THE COURT: ALL RIGHT. WE'LL BRING OUR JURY IN.

09:22AM 16 (JURY IN AT 9:22 A.M.)

09:22AM 17 THE COURT: WE'RE BACK IN THE BALWANI MATTER. ALL
09:22AM 18 COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:22AM 19 OUR JURORS AND ALTERNATES ARE PRESENT. GOOD MORNING,
09:23AM 20 LADIES AND GENTLEMEN.

09:23AM 21 BEFORE I ASK MR. BOSTIC TO BEGIN ANY REBUTTAL ARGUMENT
09:23AM 22 THAT THE GOVERNMENT MAY HAVE, MAY I ASK YOU THAT QUESTION ONE
09:23AM 23 MORE TIME.

09:23AM 24 DURING OUR BREAK AND BETWEEN OUR BREAK AND TODAY, HAVE ANY
09:23AM 25 OF YOU HAD CAUSE TO LEARN ANYTHING ABOUT THIS CASE, DO ANY

09:23AM 1 RESEARCH, DISCUSS, READ, OR LISTEN TO ANYTHING THAT HAD
09:23AM 2 ANYTHING TO DO WITH THIS CASE OR ANYONE ATTACHED TO IT?

09:23AM 3 IF SO, WOULD YOU RAISE YOUR HAND, PLEASE.

09:23AM 4 I SEE NO HANDS. THANK YOU AGAIN FOR FOLLOWING THE
09:23AM 5 ADMONITION. I'M GRATEFUL FOR THAT AS ARE THE LAWYERS.

09:23AM 6 MR. BOSTIC, DOES THE GOVERNMENT HAVE A REBUTTAL?

09:23AM 7 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

09:23AM 8 THE COURT: PLEASE.

09:24AM 9 **(MR. BOSTIC ON BEHALF OF THE GOVERNMENT GAVE HIS REBUTTAL**
09:24AM 10 **ARGUMENT.)**

09:24AM 11 MR. BOSTIC: MEMBERS OF THE JURY, GOOD MORNING. IT
09:24AM 12 OCCURS TO ME THAT BEFORE I GET STARTED, THE FIRST THING ON YOUR
09:24AM 13 MIND MIGHT BE HOW LONG AM I GOING TO TAKE.

09:24AM 14 LET ME JUST LET YOU KNOW THAT THESE ARE THE MATERIALS THAT
09:24AM 15 I WILL DISCUSS WITH YOU TODAY. WE WILL FINISH TODAY, AND I'M
09:24AM 16 GOING TO PROCEED AS EFFICIENTLY AS I CAN, ALTHOUGH THERE'S A
09:24AM 17 LOT TO COVER, SO PLEASE BEAR WITH ME.

09:24AM 18 AFTER MY REMARKS TODAY, THE COURT IS GOING TO INSTRUCT YOU
09:24AM 19 ON THE LAW THAT YOU SHOULD FOLLOW DURING YOUR DELIBERATIONS,
09:24AM 20 AND AT THAT POINT YOU'LL BE ABLE TO BEGIN DELIBERATING THE
09:24AM 21 VERDICT IN THIS CASE. AND YOU'LL BE READY FOR THAT BECAUSE
09:24AM 22 YOU'VE BEEN SPENDING THE LAST FEW WEEKS LEARNING IN DEPTH ABOUT
09:24AM 23 A COMPANY CALLED THERANOS, WHICH WAS A BLOOD TESTING COMPANY
09:24AM 24 RUN BY THE DEFENDANT RAMESH BALWANI, AND HIS PARTNER,
09:24AM 25 ELIZABETH HOLMES.

09:24AM 1 IF YOU HAD BEEN LEARNING ABOUT THE COMPANY FROM THEM WHEN
09:24AM 2 THEY WERE RUNNING THE COMPANY, YOU WOULD HAVE HEARD A VERY
09:24AM 3 DIFFERENT PICTURE OF THINGS.

09:24AM 4 YOU WOULD HAVE HEARD THAT THIS WAS A COMPANY THAT HAD
09:24AM 5 DEVELOPED A TECHNOLOGY THAT COULD RUN THE FULL RANGE OF BLOOD
09:25AM 6 TESTS FROM A SINGLE DROP OF BLOOD FROM A FINGERTIP;

09:25AM 7 YOU WOULD HAVE HEARD THAT THE COMPANY'S TECHNOLOGY COULD
09:25AM 8 RUN MANY, MANY TESTS ALL AT ONCE FROM THAT TINY SINGLE SAMPLE;

09:25AM 9 THEY WOULD HAVE TOLD YOU THAT THE COMPANY'S ANALYZER WAS
09:25AM 10 FAR SMALLER THAN THE COMMERCIAL ANALYZERS THAT HAD PREVIOUSLY
09:25AM 11 USED, AND THAT IT COULD BE USED ALMOST ANYWHERE.

09:25AM 12 THEY WOULD HAVE TOLD YOU THAT THE SPEED AND ACCURACY OF
09:25AM 13 THEIR TECHNOLOGY WAS SUPERIOR TO WHAT ELSE WAS OUT THERE IN THE
09:25AM 14 INDUSTRY;

09:25AM 15 YOU WOULD HAVE HEARD FROM THEM THAT THE COMPANY'S
09:25AM 16 TECHNOLOGY HAD BEEN COMPREHENSIVELY VALIDATED BY MULTIPLE
09:25AM 17 PHARMACEUTICAL COMPANIES, INCLUDING GIANTS LIKE PFIZER AND
09:25AM 18 SCHERING-PLOUGH;

09:25AM 19 THEY WOULD HAVE TOLD YOU THAT THE WORLD'S MOST POWERFUL
09:25AM 20 AND WELL-EQUIPPED MILITARY HAD EVEN STARTED USING THE COMPANY'S
09:25AM 21 TECHNOLOGY, AND THAT THE TECHNOLOGY WAS BEING USED ON THE
09:25AM 22 BATTLEFIELD, AND THAT IT WAS ACTUALLY SAVING THE LIVES OF
09:25AM 23 SOLDIERS FIGHTING FOR THIS COUNTRY;

09:25AM 24 YOU WOULD HAVE HEARD THAT THE COMPANY GENERATED
09:25AM 25 SIGNIFICANT REVENUES EARLY ON, AND THAT IT WAS POISED TO GO

09:26AM 1 NATIONAL AND GENERATE EVEN LARGER NUMBERS;

09:26AM 2 THEY WOULD HAVE TOLD YOU THAT THE COMPANY WAS RAISING
09:26AM 3 MONEY NOT TO CONTINUE R&D WORK, BUT TO SCALE, TO TAKE THAT
09:26AM 4 INVENTION THAT WAS FINISHED AND TO BUILD A GIANT MONOPOLY OUT
09:26AM 5 OF IT.

09:26AM 6 SO THAT WAS THE THERANOS THAT MR. BALWANI AND MS. HOLMES
09:26AM 7 WERE DESCRIBING TO PEOPLE WHEN THEY WERE RUNNING THE COMPANY.
09:26AM 8 THE PROBLEM IS, YOU KNOW NOW AFTER LISTENING TO PEOPLE WITH
09:26AM 9 FIRST HAND KNOWLEDGE, THAT THAT VERSION OF THE COMPANY NEVER
09:26AM 10 EXISTED.

09:26AM 11 YOU KNOW THAT BECAUSE YOU HEARD FROM PEOPLE WHO WORKED AT
09:26AM 12 THE COMPANY. YOU WILL HEARD FROM PEOPLE WHO PARTNERED WITH THE
09:26AM 13 COMPANY WORKING FROM OUTSIDE OF THE COMPANY. AND YOU HEARD
09:26AM 14 ABOUT THE TRUTH OF THERANOS, NOT HAVING TO RELY ON MR. BALWANI
09:26AM 15 AND MS. HOLMES LIKE THE VICTIMS IN THIS CASE DID.

09:26AM 16 AT THIS POINT, AFTER HEARING ALL OF THAT TESTIMONY, IT
09:26AM 17 MIGHT HAVE BEEN SURPRISING FOR YOU OVER THE LAST FEW DAYS TO
09:26AM 18 HEAR A LAWYER FOR THE DEFENSE DISAGREE WITH A LOT OF WHAT THOSE
09:27AM 19 WITNESSES HAD SAID IN THEIR SWORN TESTIMONY ABOUT EVENTS AND
09:27AM 20 CONVERSATIONS THAT THEY PERSONALLY WITNESSED.

09:27AM 21 I'D LIKE TO START WITH A GUIDING PRINCIPLE THAT YOU SHOULD
09:27AM 22 KEEP IN MIND. AND THIS ISN'T FROM ME. THIS IS WHAT I
09:27AM 23 ANTICIPATE THE COURT WILL INSTRUCT YOU ABOUT THE LAW.

09:27AM 24 AND THIS WILL BE JURY INSTRUCTION NUMBER 7. AND IT
09:27AM 25 CONCERNS WHAT IS NOT EVIDENCE?

09:27AM 1 AND NOTICE IT SAYS, "IN REACHING YOUR VERDICT, YOU MAY
09:27AM 2 CONSIDER ONLY THE TESTIMONY AND EXHIBITS RECEIVED IN EVIDENCE.
09:27AM 3 THE FOLLOWING THINGS ARE NOT EVIDENCE."

09:27AM 4 NUMBER 1 IS "QUESTIONS, STATEMENTS, OBJECTIONS, AND
09:27AM 5 ARGUMENTS BY THE LAWYERS, THOSE ARE NOT EVIDENCE."

09:27AM 6 IT ALSO SAYS, "WHAT THE LAWYERS HAVE SAID IN THEIR OPENING
09:27AM 7 STATEMENTS, CLOSING ARGUMENTS, AND AT OTHER TIMES IS INTENDED
09:27AM 8 TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE."

09:27AM 9 SO THIS GOES FOR WHAT I SAY AS WELL. IT CERTAINLY GOES
09:27AM 10 FOR WHAT YOU HEARD IN THE DEFENSE CLOSING. THAT WAS NOT
09:27AM 11 EVIDENCE. WHAT THE WITNESSES SAID WAS EVIDENCE.

09:27AM 12 THE LAWYER'S JOB HERE IS TO POINT OUT THE SIGNIFICANT
09:28AM 13 EVIDENCE TO YOU AND EXPLAIN HOW IT FITS INTO THE LARGER
09:28AM 14 PICTURE, NOT TO SUBSTITUTE THEIR VERSION OF THINGS FOR THE
09:28AM 15 WITNESSES WHO ARE ACTUALLY TESTIFYING BASED ON THEIR KNOWLEDGE.

09:28AM 16 SO WHAT DOES THE ACTUAL EVIDENCE SHOW IN THIS CASE?

09:28AM 17 WELL, ONE THING YOU SAW PLENTY OF, WAS EVIDENCE OF VERY
09:28AM 18 SERIOUS PROBLEMS WITH THE ACCURACY AND RELIABILITY OF
09:28AM 19 THERANOS'S TESTING.

09:28AM 20 THE SIMPLEST EVIDENCE ON THIS TOPIC WAS TESTIMONY FROM AT
09:28AM 21 LEAST THREE INDIVIDUALS WHO WORKED WITHIN THERANOS WORKING IN
09:28AM 22 THE LAB. THAT WAS, OF COURSE, ERIKA CHEUNG AND THEN
09:28AM 23 DRS. MARK PANDORI AND ADAM ROSENDORFF. THROUGH THEIR ROLES,
09:28AM 24 THEY HAD FIRST HAND KNOWLEDGE AND FIRST HAND EXPERIENCE WITH
09:28AM 25 THE THERANOS TESTING, AND THEY SAW THE SERIOUS PROBLEMS THAT

09:28AM 1 WERE PLAGUING THAT TECHNOLOGY AND THAT TESTING AT THAT TIME.

09:28AM 2 IN FACT, YOU HEARD THAT ALL OF THOSE EMPLOYEES ACTUALLY
09:28AM 3 QUIT THEIR JOBS AT THERANOS OVER THE CONCERNS THAT THEY HAD
09:28AM 4 WITH THE UNRELIABILITY OF THE RESULTS THAT THERANOS WAS
09:29AM 5 PROVIDING TO PATIENTS.

09:29AM 6 NOW, MR. COOPERSMITH HAD SOME REMARKS ABOUT ALL THREE OF
09:29AM 7 THESE WITNESSES. WHEN IT CAME TO DR. ROSENDORFF,
09:29AM 8 MR. COOPERSMITH ACCUSED HIM OF BEING BIASED. HE SUGGESTED
09:29AM 9 THAT DR. ROSENDORFF'S COMPLAINTS ABOUT THERANOS HAD BEEN
09:29AM 10 MANUFACTURED AFTER THE FACT BECAUSE WE'RE HERE IN FEDERAL
09:29AM 11 CRIMINAL COURT. THAT WAS A THEME THAT YOU HEARD MULTIPLE TIMES
09:29AM 12 DURING THE DEFENSE CLOSING.

09:29AM 13 BUT DOES THAT SQUARE WITH THE EVIDENCE? IS THAT
09:29AM 14 CONSISTENT WITH THE ACTUAL EVIDENCE THAT YOU HEARD IN COURT?

09:29AM 15 AND I'LL REMIND YOU THAT DURING DR. ROSENDORFF'S
09:29AM 16 TESTIMONY, YOU SAW NUMEROUS EXAMPLES OF SITUATIONS WHERE HE
09:29AM 17 RAISED HIS GRAVE CONCERNS WHILE HE WAS LAB DIRECTOR AT
09:29AM 18 THERANOS.

09:29AM 19 YOU HEARD TESTIMONY ABOUT WHY HE LEFT HIS JOB THERE. AND
09:29AM 20 YOU ALSO SAW, IN PARTICULAR, THAT HE HAD A PRACTICE FOR A
09:29AM 21 SIGNIFICANT PORTION OF HIS TIME AT THE COMPANY WHERE HE WOULD
09:29AM 22 ACTUALLY FORWARD EMAILS TO HIS PERSONAL GMAIL ACCOUNT.

09:30AM 23 NOW, THAT MAY BE SOMETHING THAT HE WAS NOT ALLOWED TO DO,
09:30AM 24 SHOULDN'T HAVE DONE PER COMPANY POLICY. BUT HE TOLD YOU THE
09:30AM 25 REASON THAT HE WAS DOING THAT WAS BECAUSE HE WAS SO TROUBLED BY

09:30AM 1 WHAT HE WAS SEEING AT THE COMPANY, THE COMPANY WHERE HE WAS LAB
09:30AM 2 DIRECTOR, THAT HE WAS WORRIED ABOUT A FUTURE INVESTIGATION. HE
09:30AM 3 FORWARDED INCRIMINATING EMAILS TO HIS PERSONAL EMAIL ACCOUNT SO
09:30AM 4 THAT HE WOULD HAVE ACCESS TO THOSE IN CASE HE NEEDED THEM TO
09:30AM 5 RESPOND TO AN INVESTIGATION IN THE FUTURE, AND SURE ENOUGH,
09:30AM 6 THERE WAS ONE RESULTING IN THIS TRIAL.

09:30AM 7 SO THERE IS NO REASON TO BELIEVE, AND EVERY REASON NOT TO
09:30AM 8 BELIEVE, THAT DR. ROSENDORFF'S CONCERNS ARE SOMETHING THAT HE
09:30AM 9 CAME UP WITH AFTER THE FACT. YOU KNOW THAT THOSE ARE THINGS
09:30AM 10 THAT WEIGHED HEAVILY ON HIS MIND WHILE HE WAS AT THE COMPANY.

09:30AM 11 MR. COOPERSMITH DURING HIS REMARKS WAS ALSO QUICK TO POINT
09:30AM 12 OUT DR. ROSENDORFF'S TESTIMONY THAT HE NEVER KNOWINGLY RELEASED
09:30AM 13 AN INACCURATE RESULT, AND THAT HE WAS NEVER DIRECTED TO RELEASE
09:30AM 14 A RESULT THAT HE KNEW WAS INACCURATE.

09:31AM 15 I WANT YOU TO THINK ABOUT HOW THAT QUESTION IS PHRASED
09:31AM 16 BECAUSE YOU HEARD DR. ROSENDORFF'S TESTIMONY THAT WHEN A RESULT
09:31AM 17 COMES OUT, IT'S VERY DIFFICULT, AND OFTEN IMPOSSIBLE, TO JUST
09:31AM 18 LOOK AT IT AND KNOW WHETHER IT'S ACCURATE OR NOT.

09:31AM 19 FREQUENTLY YOU NEED TO KNOW OTHER INFORMATION ABOUT THE
09:31AM 20 WAY THE PATIENT IS PRESENTING, THEIR HEALTH RECORDS TO
09:31AM 21 UNDERSTAND WHETHER THAT RESULT IS ACCURATE OR NOT. SO YOU
09:31AM 22 SHOULDN'T BE SURPRISED TO HEAR THAT IN THIS LAB THAT HAD MANY
09:31AM 23 ACCURACY PROBLEMS, THE LAB DIRECTOR NEVER KNOWINGLY SENT OUT A
09:31AM 24 FALSE RESULT. THAT'S NOT TO SAY HE'S NOT AWARE THAT FALSE
09:31AM 25 RESULTS DID GET SENT OUT. YOU SAW MANY EXAMPLES OF THAT.

09:31AM 1 HE ALSO SAID THAT BY THE TIME HE LEFT THE COMPANY, HE
09:31AM 2 DIDN'T HAVE FAITH IN THE ACCURACY AND RELIABILITY OF THE SYSTEM
09:31AM 3 THAT THERANOS WAS USING TO PERFORM ITS BLOOD TESTING, ITS HOME
09:31AM 4 GROWN EDISON SYSTEM. AND HE TOLD YOU DIRECTLY THAT THE PERSON
09:32AM 5 WHO DECIDED WHAT SYSTEM THE COMPANY USED FOR TESTING WAS THE
09:32AM 6 DEFENDANT, SUNNY BALWANI.

09:32AM 7 SO WHILE MR. BALWANI MIGHT NOT HAVE EXPRESSLY REQUIRED HIM
09:32AM 8 TO SEND OUT AN INDIVIDUAL RESULT HE KNEW WAS INACCURATE, HE WAS
09:32AM 9 THE ONE WHO WAS FORCING THIS LAB DIRECTOR TO USE A SYSTEM THAT
09:32AM 10 HE DIDN'T HAVE CONFIDENCE IN.

09:32AM 11 DR. PANDORI SAID SOMETHING VERY SIMILAR TO WHAT
09:32AM 12 DR. ROSENDORFF SAID.

09:32AM 13 MR. COOPERSMITH'S RESPONSE TO THAT WAS EVEN STRONGER. HE
09:32AM 14 SAID SOMETHING TO THE EFFECT OF THAT YOU AS THE JURY COULD NOT
09:32AM 15 BELIEVE A WORD THAT THIS MAN SAYS. HE ACCUSED DR. PANDORI OF
09:32AM 16 LYING REPEATEDLY ON THE STAND.

09:32AM 17 IN SUPPORT OF THAT CLAIM, HE TALKED ABOUT SOME MEMORY
09:32AM 18 ISSUES THAT DR. PANDORI HAD WHEN HE WAS SHOWN DOCUMENTS ON
09:32AM 19 CROSS-EXAMINATION. IT'S UP TO YOU AS THE JURY TO WEIGH WITNESS
09:32AM 20 CREDIBILITY AND DECIDE WHETHER YOU THINK THAT'S SUFFICIENT TO
09:32AM 21 CALL THIS PERSON A LIAR AND DISREGARD THEIR TESTIMONY.

09:33AM 22 BUT I WOULD JUST LIKE TO REMIND YOU OF A FEW THINGS. YOU
09:33AM 23 HEARD OVER THE COURSE OF THE TRIAL ABOUT WITNESSES WHO HAD MET
09:33AM 24 WITH THE GOVERNMENT PRIOR TO THEIR TESTIMONY AND HAD BEEN SHOWN
09:33AM 25 DOCUMENTS. YOU HAVE NOT HEARD EVIDENCE THAT DR. PANDORI MET

09:33AM 1 WITH THE DEFENSE. SO YOU SHOULD ASK YOURSELVES WHETHER IT
09:33AM 2 REALLY IS SURPRISING THAT HE MIGHT NOT REMEMBER A GIVEN
09:33AM 3 DOCUMENT THAT HE'S BEING SHOWN FOR THE FIRST TIME ON THE STAND
09:33AM 4 BY THE DEFENSE HAVING NOT SEEN THAT DOCUMENT RECENTLY, HAVING
09:33AM 5 NOT SEEN IT SINCE 2013 OR 2014. IS THAT REALLY SURPRISING? IS
09:33AM 6 THAT A REASON TO DOUBT HIS VERACITY, HIS INTEGRITY?

09:33AM 7 AND IN PARTICULAR, YOU'LL REMEMBER THAT THE DOCUMENT THAT
09:33AM 8 MR. COOPERSMITH DISCUSSED A LOT WAS DR. PANDORI'S DEPARTURE
09:33AM 9 MEMO. AND WHEN IT CAME TO THAT, YOU'LL RECALL THAT WHEN HE WAS
09:33AM 10 FIRST SHOWN THAT DOCUMENT, HE WAS SHOWN A VERSION OF IT THAT
09:33AM 11 HAD SOME MISSING HEADER INFORMATION. ISN'T IT LIKELY THAT THAT
09:34AM 12 CONTRIBUTED TO HIS CONFUSION ABOUT THAT DOCUMENT?

09:34AM 13 THE DEFENSE'S THEORY IS THAT DR. PANDORI WAS SO TROUBLED
09:34AM 14 BY THE CONTENT OF THAT DOCUMENT, THAT HE WAS TRYING TO DISTANCE
09:34AM 15 HIMSELF FROM IT. BUT WAS THE SUBSTANCE OF THAT DOCUMENT SO
09:34AM 16 DAMAGING TO DR. PANDORI'S TESTIMONY THAT HE WOULD EVEN HAVE A
09:34AM 17 MOTIVE TO DO THAT?

09:34AM 18 THE DEPARTURE MEMO, AS THE DEFENSE LIKES TO POINT OUT,
09:34AM 19 DISCUSSED DR. PANDORI'S OPINION THAT MORE EDISONS WERE NEEDED
09:34AM 20 TO RUN THE THERANOS TESTING. AND THE DEFENSE SAYS THAT THAT
09:34AM 21 RECOMMENDATION IS INCONSISTENT WITH DR. PANDORI'S OPINION THAT
09:34AM 22 THE EDISON MACHINES SUFFERED FROM SERIOUS PROBLEMS.

09:34AM 23 THAT'S NOT TRUE AT ALL. DR. PANDORI TOLD YOU THAT THE
09:34AM 24 REASON HE DIDN'T PUT THOSE COMPLAINTS IN HIS DEPARTURE MEMO, IS
09:34AM 25 BECAUSE IT WOULD HAVE FELT LIKE BANGING HIS HEAD AGAINST THE

09:34AM 1 WALL. HE HAD RAISED THOSE CONCERNS MULTIPLE TIMES.

09:34AM 2 AND REMEMBER THAT THAT DEPARTURE MEMO WAS SENT TO
09:34AM 3 DR. ROSENDORFF WHO CERTAINLY ALREADY KNEW ABOUT DR. PANDORI'S
09:34AM 4 CONCERNS, ALONG WITH OTHERS AT THE COMPANY.

09:35AM 5 WHAT WOULD HAVE BEEN THE POINT IN INCLUDING THAT
09:35AM 6 INFORMATION JUST AS A PROTEST IN THAT DEPARTURE MEMORANDUM?

09:35AM 7 DR. PANDORI ALSO TOLD YOU THAT HIS ROLE AT THE COMPANY AS
09:35AM 8 CO-LAB DIRECTOR FOCUSSED ON THE OPERATIONAL SIDE OF THE LAB.
09:35AM 9 ONE OF HIS JOBS WAS TO LOOK AT THE PROCESS BY WHICH THERANOS
09:35AM 10 WAS TESTING ITS SAMPLES AND MAKE SURE THAT IT WAS RUNNING
09:35AM 11 SMOOTHLY, TO LOOK FOR WAYS THAT IT COULD BE IMPROVED. AND IN
09:35AM 12 DOING THAT, HE BECAME VERY FAMILIAR WITH THE WAYS IN WHICH THE
09:35AM 13 EDISON DEVICES MALFUNCTIONED, PROVIDED UNRELIABLE RESULTS,
09:35AM 14 FAILED QUALITY CONTROL, AND HOW THAT IMPACTED THE LAB'S ABILITY
09:35AM 15 TO ACTUALLY DO ITS WORK, TO EVEN MOVE SAMPLES THROUGH THE LAB
09:35AM 16 IN THE FIRST PLACE.

09:35AM 17 SO THAT'S WHY HE WAS AWARE OF THAT. AND THAT'S WHY IN
09:35AM 18 CRAFTING HIS DEPARTURE MEMO, PASSING ALONG THAT INFORMATION TO
09:35AM 19 WHOEVER WAS GOING TO TAKE HIS ROLE, HE FOCUSSED ON THE
09:35AM 20 OPERATIONAL SIDE OF THINGS.

09:35AM 21 WHEN IT CAME TO ERIKA CHEUNG, THE DEFENDANT'S MAIN
09:36AM 22 RESPONSE TO HER SEEMS TO BE THAT SHE WAS LESS EXPERIENCED THAN
09:36AM 23 OTHER PEOPLE IN THE LAB. THINK ABOUT WHAT THAT MEANS, THOUGH.

09:36AM 24 ERIKA CHEUNG WAS AT THE COMPANY FOR A FEW SHORT MONTHS.
09:36AM 25 SHE DID NOT HAVE ADVANCED DEGREES. SHE WAS A RECENT COLLEGE

09:36AM 1 GRADUATE, BUT SHE WORKED DIRECTLY WITH THE TECHNOLOGY. SHE
09:36AM 2 ACTUALLY RAN PATIENT TEST SAMPLES. SO THE FACT THAT SHE WAS
09:36AM 3 ABLE TO EASILY RECOGNIZE THE SERIOUS PROBLEMS WITH THERANOS'S
09:36AM 4 TESTING SHOULD REALLY TELL YOU SOMETHING, AND IT SHOULD REALLY
09:36AM 5 GIVE YOU ANY DOUBTS -- OR IT SHOULD GIVE YOU SERIOUS DOUBTS
09:36AM 6 ABOUT ANY ARGUMENT FROM THE DEFENSE THAT MR. BALWANI DIDN'T
09:36AM 7 UNDERSTAND THE PROBLEMS WITH THERANOS TESTING.

09:36AM 8 MS. CHEUNG, RIGHT OUT OF COLLEGE WORKING HER FIRST JOB
09:36AM 9 AFTER SCHOOL, WAS ABLE TO QUICKLY SEE THE SERIOUS PROBLEMS AND
09:36AM 10 NEEDED TO LEAVE THE COMPANY AS A RESULT OF IT.

09:36AM 11 YOU ALSO HEARD ABOUT WHAT SHE WENT THROUGH WHEN SHE BECAME
09:37AM 12 A WHISTLEBLOWER AND SPOKE TO REGULATORS ABOUT THE COMPANY. YOU
09:37AM 13 HEARD WHAT THE COMPANY DID IN TERMS OF THREATENING HER, AND YOU
09:37AM 14 LISTENED TO HER TEARFULLY DESCRIBE THAT WHEN SHE WAS ON THE
09:37AM 15 STAND.

09:37AM 16 SO, AGAIN, THE IDEA THAT THESE EMPLOYEES HAVE THESE
09:37AM 17 NEGATIVE OPINIONS ABOUT THERANOS BECAUSE OF THE CONTEXT TODAY,
09:37AM 18 THE IDEA THAT THEY ARE ANTI-THERANOS OR COMPLAINING ABOUT THE
09:37AM 19 COMPANY BECAUSE WE'RE IN A FEDERAL CRIMINAL CASE IS EXACTLY
09:37AM 20 BACKWARDS.

09:37AM 21 WE'RE HERE TODAY BECAUSE THOSE COMPLAINTS CAME FORWARD,
09:37AM 22 BECAUSE THOSE EMPLOYEES WITH PERSONAL KNOWLEDGE WERE MOTIVATED
09:37AM 23 TO SPEAK UP BECAUSE THEY WERE SO TROUBLED BY THE THINGS THAT
09:37AM 24 THEY SAW.

09:37AM 25 AND CRITICALLY TO THE QUESTIONS THAT YOU NEED TO ANSWER IS

09:37AM 1 THE FACT THAT ALL THREE OF THOSE EMPLOYEES ACTUALLY RAISED
09:37AM 2 THEIR CONCERNS DIRECTLY TO THIS DEFENDANT, MR. BALWANI. SO HE
09:37AM 3 KNEW HOW THEY FELT. HE KNEW THAT THE SCIENTISTS WORKING AT
09:37AM 4 THERANOS, THE PEOPLE WHO WERE WORKING DIRECTLY WITH THIS
09:38AM 5 TECHNOLOGY WHO WERE RESPONSIBLE FOR PERFORMING AND OVERSEEING
09:38AM 6 THE LAB TESTING HAD SERIOUS CONCERNS, WERE WORRIED ABOUT THE
09:38AM 7 ACCURACY AND RELIABILITY OF THE TESTS THE COMPANY WAS SENDING
09:38AM 8 OUT.

09:38AM 9 HE HEARD. HE JUST DIDN'T CARE.

09:38AM 10 OF ALL OF THE THERANOS LAB WORKERS WHO TESTIFIED AT TRIAL,
09:38AM 11 THE ONLY TWO WHO DIDN'T QUIT BECAUSE OF THOSE CONCERNS WERE
09:38AM 12 SUNIL DHAWAN AND LYNETTE SAWYER. AND THE INTERESTING THING
09:38AM 13 ABOUT THEM, OBVIOUSLY, IS THAT THEY DIDN'T KNOW ENOUGH TO
09:38AM 14 REALIZE THAT THERE WERE THESE SERIOUS PROBLEMS AT THE COMPANY.

09:38AM 15 YOU HEARD ABOUT THE VERY LIMITED NATURE OF THE WORK THAT
09:38AM 16 THEY DID FOR THE COMPANY, AND HOW PURSUANT TO THE ASSIGNMENTS
09:38AM 17 THEY GOT FROM MR. BALWANI ABOUT THE SCOPE OF THEIR JOB, THEY
09:38AM 18 DIDN'T KNOW ANYTHING ABOUT THE ACCURACY AND RELIABILITY
09:38AM 19 PROBLEMS THAT THE COMPANY WAS FACING.

09:38AM 20 SO THAT WAS APPARENTLY MR. BALWANI'S LAB DIRECTOR
09:38AM 21 RETENTION PLAN AFTER 2014, KEEP THEM IN THE DARK, KEEP THEM
09:39AM 22 FROM KNOWING ABOUT THE PROBLEMS SO THAT THEY DON'T MAKE NOISE,
09:39AM 23 SO THAT THEY DON'T QUIT. AND IT WORKED.

09:39AM 24 YOU HEARD TESTIMONY FROM THE THERANOS LAB EMPLOYEES WHO
09:39AM 25 QUIT ABOUT THE REASONS THAT THEY WERE EXCITED TO WORK FOR THE

09:39AM 1 COMPANY IN THE FIRST PLACE, WHY THEY WERE DRAWN TO THOSE ROLES
09:39AM 2 AND WHAT THEY MEANT TO THEM, SO YOU KNOW THAT THEY DIDN'T TAKE
09:39AM 3 THEIR DECISIONS TO LEAVE LIGHTLY.

09:39AM 4 SO THE QUESTION THAT YOU SHOULD ASK IS HOW DID IT GET TO
09:39AM 5 THAT POINT? HOW DID IT GET SO BAD THAT THESE PEOPLE ALL MADE
09:39AM 6 THE SAME DECISION, THE DECISION THAT THEY COULD NO LONGER BE
09:39AM 7 ASSOCIATED WITH THIS COMPANY?

09:39AM 8 WELL, YOU SAW THAT IN EVIDENCE, TOO.

09:39AM 9 ONE THING YOU HEARD ABOUT WAS RUSHED ASSAY DEVELOPMENT.
09:39AM 10 IN THE TIME PERIOD LEADING UP TO THERANOS'S COMMERCIAL LAUNCH
09:39AM 11 IN LATE SUMMER OF 2013, DR. ROSENDORFF TESTIFIED THAT IN THOSE
09:39AM 12 TWO TO THREE MONTHS LEADING UP TO THE LAUNCH, IT WAS EXTREMELY
09:39AM 13 RUSHED AND HURRIED, HE SAID. "THERE WAS IMMENSE PRESSURE PUT
09:40AM 14 ON R&D AND THE TECHS AND MYSELF TO GET THINGS VALIDATED AND
09:40AM 15 GENERATE DATA."

09:40AM 16 WHEN HE WAS ASKED WHERE THAT PRESSURE WAS COMING FROM, HE
09:40AM 17 QUICKLY ANSWERED SUNNY BALWANI.

09:40AM 18 THE DEFENSE NOW CLAIMS THAT THAT CAN'T BE TRUE BECAUSE THE
09:40AM 19 INITIAL LAUNCH IN SEPTEMBER OF 2013 WAS A SOFT LAUNCH AS
09:40AM 20 THEY'RE NOW CALLING IT, WHICH WAS TO FRIENDS AND FAMILY ONLY
09:40AM 21 WITH ONLY TWO ASSAYS OFFERED AT FIRST, CBC, THE COMPLETE BLOOD
09:40AM 22 COUNT, AND HBAIC.

09:40AM 23 FIRST OF ALL, THOUGH, I'LL ASK YOU TO THINK BACK TO THE
09:40AM 24 PRESS RELEASES AROUND THAT TIME, ALL OF THE FAVORABLE PUBLICITY
09:40AM 25 THAT THERANOS ENGINEERED IN THE PRESS.

DO YOU RECALL ANY OF THOSE MATERIALS, THE CONVERSATIONS WITH THE INVESTORS, THE PROMOTIONAL MATERIALS, THE PRESENTATIONS, THE PRESS RELEASE, DID ANY OF THAT MINIMIZE THIS LAUNCH AS A SOFT LAUNCH? DID ANY OF THAT DISCLOSE THAT THESE TESTS WERE ONLY BEING OFFERED TO FRIENDS AND FAMILY? DID ANY OF THAT SAY THAT THIS LAUNCH WAS ONLY INCLUDING TWO ASSAYS, NEITHER OF WHICH WAS EVER OFFERED ON THE THERANOS PROPRIETARY ANALYZER?

OF COURSE NOT. BECAUSE THE DEFENDANT'S GOAL BACK THEN WAS TO MAXIMIZE THE IMPACT OF WHAT THEY WERE DOING. THEY WANTED TO IMPRESS INVESTORS, PATIENTS, AND THE PUBLIC, TO EXAGGERATE WHAT THE COMPANY WAS DOING AT THAT TIME.

SO THE FACT THAT THEY'RE TRYING TO MINIMIZE IT NOW AND SAY THAT THIS WAS JUST A SOFT LAUNCH, I THINK YOU SHOULD BE SKEPTICAL OF THOSE TWO COMPETING MESSAGES.

MORE IMPORTANT THAN, DR. ROSENDORFF WAS ASKED ABOUT THIS, AND HE TESTIFIED THAT TO A MEDICAL DOCTOR, TO A LAB DIRECTOR, IT MAKES NO DIFFERENCE WHO WAS BEING TESTED OR WHY. WHEN YOU'RE PERFORMING CLINICAL TESTS ON PATIENTS, ACCURACY IS PARAMOUNT, AND THAT IS TRUE REGARDLESS OF WHETHER THE PEOPLE ARE PAYING FOR THE TESTS, REGARDLESS OF WHETHER THEY'RE CONNECTED TO THE COMPANY DOING THE TESTS, AND REGARDLESS OF HOW MANY TESTS ARE BEING CONDUCTED. THAT'S HOW SOMEONE APPROACHES THIS ISSUE WHEN THEY'RE PRIORITIZING FIDELITY TO PATIENTS AND ACCURACY IN RESULTS.

09:42AM 1 THE DEFENSE ALSO TALKED ABOUT DR. ROSENDORFF'S SIGNING OF
09:42AM 2 VALIDATION REPORTS IN THERANOS AND WHAT THAT SAYS ABOUT THE
09:42AM 3 COMPANY'S TECHNOLOGY.

09:42AM 4 AND IT'S TRUE THAT DR. ROSENDORFF TESTIFIED THAT WHEN HE
09:42AM 5 SIGNED THOSE VALIDATION REPORTS, HE DID SO BECAUSE HE BELIEVED
09:42AM 6 THAT THE REQUIREMENTS HAD BEEN MET AT THE TIME.

09:42AM 7 TWO QUICK THINGS TO KEEP IN MIND WHEN IT COMES TO THAT,
09:42AM 8 THOUGH.

09:42AM 9 FIRST, YOU KNOW FROM YOUR COMMON SENSE THAT WHEN A PROCESS
09:42AM 10 IS RUSHED, IT CREATES ROOM FOR ERROR. AND YOU ALSO KNOW FROM
09:42AM 11 YOUR COMMON SENSE THAT SOME PROCESSES ARE IMPORTANT ENOUGH THAT
09:42AM 12 THEY SHOULD NOT BE RUSHED.

09:42AM 13 YOU HEARD THAT THE VALIDATION PROCESS AT THERANOS, THAT
09:42AM 14 STAGE OF THINGS WAS CONDUCTED AT A VERY HURRIED PACE WITH A LOT
09:43AM 15 OF PRESSURE PLACED ON THE PEOPLE WHO WERE DOING THAT WORK. IS
09:43AM 16 IT SURPRISING THAT THE RESULT OF IT LED TO UNRELIABLE TESTS?
09:43AM 17 OF COURSE NOT.

09:43AM 18 DR. ROSENDORFF ALSO TESTIFIED THAT ALTHOUGH ASSAYS APPEAR
09:43AM 19 TO PERFORM WELL ENOUGH DURING THE VALIDATION STAGE, THEIR
09:43AM 20 PERFORMANCE DEGRADED SIGNIFICANTLY ONCE THEY ACTUALLY STARTED
09:43AM 21 USING THOSE ASSAYS ON PATIENTS, ONCE THEY STARTED TESTING
09:43AM 22 PATIENTS, THE TEST PERFORMED SO MUCH WORSE.

09:43AM 23 AT THIS STAGE, IT APPEARS THAT MR. BALWANI IS ASKING YOU
09:43AM 24 TO IGNORE THOSE FACTS JUST LIKE HE DID BACK WHEN HE WAS RUNNING
09:43AM 25 THERANOS, BUT THAT MATTERS. THE QUESTION OF WHETHER A TEST IS

09:43AM 1 ACCURATE OR NOT DOES NOT ANSWER ITSELF ONCE AND FOR ALL WHEN A
09:43AM 2 TEST IS VALIDATED. YOU NEED TO CONTINUE TO MONITOR THAT TEST
09:43AM 3 PERFORMANCE, AND IF IT'S FAILING QUALITY CONTROL, WHICH WE'LL
09:43AM 4 TALK ABOUT IN A MINUTE, IF PATIENTS ARE GETTING INACCURATE
09:44AM 5 RESULTS, THEN YOU NEED TO MAKE A DECISION ABOUT WHETHER TO KEEP
09:44AM 6 OFFERING THAT TEST OR NOT. AND MR. BALWANI CONSISTENTLY MADE
09:44AM 7 THE WRONG DECISION WHEN IT CAME TO THAT.

09:44AM 8 LET'S TALK ABOUT QUALITY CONTROL BECAUSE THIS IS AN
09:44AM 9 IMPORTANT TOPIC, AND IT'S ONE OF THE MAIN WAYS THAT YOU KNOW
09:44AM 10 THAT THERANOS'S TESTING WAS INACCURATE AND UNRELIABLE.

09:44AM 11 AND LET'S START BY TALKING ABOUT OUTLIER REMOVAL, WHICH IS
09:44AM 12 SOMETHING THAT MR. COOPERSMITH DISCUSSED. YOU'LL RECALL THIS
09:44AM 13 EXHIBIT, THIS IS 1287, WHERE MS. CHEUNG RUNNING QUALITY CONTROL
09:44AM 14 IN NOVEMBER OF 2013 AFTER THE COMMERCIAL LAUNCH FELT THE NEED
09:44AM 15 TO EMAIL THIS GROUP NORMANDY 911. YOU DIDN'T HEAR ANY EVIDENCE
09:44AM 16 THAT THERE WAS A SIMILAR 911 EMERGENCY EMAIL FOR THE SECTION OF
09:44AM 17 THE LAB THAT USED COMMERCIALLY STANDARD DEVICES BY THE WAY.

09:44AM 18 IN THIS EMAIL, MS. CHEUNG IS REPORTING THAT WHEN SHE DID A
09:44AM 19 QUALITY CONTROL CHECK, CHECKING TO SEE WHETHER A DEVICE IS
09:45AM 20 READY TO BE TESTED ON PATIENTS, WHETHER IT COULD ACCURATELY
09:45AM 21 IDENTIFY THE CONCENTRATIONS OF THE CONTROL SAMPLES. BOTH
09:45AM 22 CONTROLS FAILED IN THIS CASE.

09:45AM 23 SHE NOTES THAT SHE USED ALL UNOPENED REAGENTS AND A NEW
09:45AM 24 PACKAGE OF CARTRIDGES. SO THAT WAS NOT THE PROBLEM. BUT SHE
09:45AM 25 SAYS THAT FAILED AS WELL.

09:45AM 1 MR. BALWANI RECOGNIZED THAT THIS WAS BEYOND UNACCEPTABLE
09:45AM 2 PERFORMANCE. SO I WANT YOU TO REMEMBER THIS EMAIL AND OTHER
09:45AM 3 EMAILS LIKE IT. YOU'VE SEEN OTHERS LIKE THIS. WHENEVER YOU
09:45AM 4 THINK ABOUT THE DEFENSE'S CLAIM THAT MR. BALWANI THOUGHT
09:45AM 5 EVERYTHING WAS FINE WITH THE COMPANY'S TECHNOLOGY, IN HIS OWN
09:45AM 6 WORDS, HE'S TELLING YOU THAT THAT'S NOT TRUE.

09:45AM 7 MS. HOLMES THEN WEIGHS IN AND ASKS WHETHER THERE'S ENOUGH
09:45AM 8 SAMPLE IN THIS PARTICULAR PATIENT SAMPLE TO RUN THAT TEST ON
09:45AM 9 TRADITIONAL METHODS.

09:45AM 10 SO, AGAIN, AN ACKNOWLEDGEMENT BY MS. HOLMES AS ONE OF THE
09:45AM 11 TWO PEOPLE RUNNING THE COMPANY THAT TRADITIONAL METHODS WOULD
09:46AM 12 BE MORE RELIABLE, MORE DEPENDABLE.

09:46AM 13 FAST FORWARDING IN THIS EMAIL CHAIN. THERE ENDS UP BEING
09:46AM 14 A RESOLUTION, AND MS. HOLMES ASKS WHAT IT IS AND IS TOLD THAT
09:46AM 15 TWO OUTLIERS HAD TO BE MANUALLY REMOVED IN ORDER TO PASS
09:46AM 16 QUALITY CONTROL.

09:46AM 17 AND YOU'LL RECALL THAT FOR A PORTION OF TIME AFTER THE
09:46AM 18 COMMERCIAL LAUNCH, THERANOS WAS USING THREE EDISON DEVICES AT A
09:46AM 19 TIME TO RUN A SINGLE PATIENT TEST. THAT MEANT, BY THE WAY,
09:46AM 20 THAT IF A PATIENT NEEDED THREE DIFFERENT KINDS OF TESTS RUN ON
09:46AM 21 AN EDISON, NINE DEVICES WOULD BE REQUIRED JUST TO RETURN THAT
09:46AM 22 THE RESULT FOR THAT ONE PATIENT.

09:46AM 23 AND THE REASON THEY DID THAT WAS TO GENERATE ENOUGH DATA
09:46AM 24 TO BE ABLE TO AVERAGE OUT VARIANCE AND TO HAVE THE OPTION TO
09:46AM 25 REMOVE WHAT THEY CALLED "OUTLIERS."

09:46AM 1 SO, IN OTHER WORDS, IN ORDER TO PASS QUALITY CONTROL, IN
09:46AM 2 ORDER FOR THIS DEVICE TO BE DEEMED GOOD ENOUGH TO BE USED ON A
09:47AM 3 PATIENT, SOME OF THE DATA HAD TO BE IGNORED, SOME OF THE DATA
09:47AM 4 HAD TO BE THROWN OUT, BECAUSE IF YOU CONSIDERED ALL OF THE DATA
09:47AM 5 TOGETHER, IT WOULD NOT PASS QUALITY CONTROL.

09:47AM 6 NOW, THE DEFENSE POINTS OUT THAT MR. OR DR. ROSENDORFF
09:47AM 7 KNEW ABOUT THIS PRACTICE AND ALLOWED IT, AND THAT'S TRUE. THEY
09:47AM 8 SHOWED AN EMAIL WHERE DR. ROSENDORFF SAYS THE REASON WE'RE
09:47AM 9 DOING THIS IS TO GENERATE ENOUGH DATA POINTS AND AVERAGE OUT
09:47AM 10 VARIATION.

09:47AM 11 THAT'S THE POINT THOUGH. IT'S NOT THAT THIS AVERAGING
09:47AM 12 PRACTICE AND THE REMOVING THE OUTLIERS IS THE FRAUD, BUT THIS
09:47AM 13 DOES SHOW THAT THE COMPANY HAD A LACK OF CONFIDENCE IN ITS OWN
09:47AM 14 TECHNOLOGY, BECAUSE THERE'S NO REASON TO DO THIS IF YOU KNOW
09:47AM 15 THAT YOUR DEVICE CAN RUN A TEST AND RETURN AN ACCURATE RESULT.
09:47AM 16 THERE'S NO REASON TO GROUP THEM IN GROUPS OF THREE, HAVE THEM
09:47AM 17 COORDINATE WITH EACH OTHER, AND THEN IGNORE SOME OF THE DATA
09:47AM 18 AVERAGING OUT THE REST IF YOUR DEVICE IS RELIABLE AND CAN
09:47AM 19 RETURN THE RESULT IT NEEDS TO RETURN THE FIRST TIME.

09:48AM 20 AND YOU HEARD TESTIMONY THAT THIS PRACTICE, THIS PRACTICE
09:48AM 21 OF RUNNING A TEST MULTIPLE TIMES TO CHECK AN ANSWER, AVERAGING
09:48AM 22 THE RESULTS, DISCARDING SOME OF THE DATA, THAT'S NOT A PRACTICE
09:48AM 23 THAT NEEDS TO BE USED WITH THIRD PARTY DEVICES. SO THE
09:48AM 24 COMMERCIAL DEVICES THAT THERANOS WAS ALSO USING DID NOT EMPLOY
09:48AM 25 THIS PRACTICE, AND THAT'S BECAUSE IT WAS NOT NECESSARY. THOSE

09:48AM 1 DEVICES COULD RUN A TEST ONE TIME AND RETURN A RESULT THAT WAS
09:48AM 2 SUFFICIENTLY RELIABLE.

09:48AM 3 ONE REASON YOU KNOW THAT THERANOS WOULD NOT HAVE DONE THIS
09:48AM 4 UNLESS IT HAD TO IS THAT YOU KNOW THE COMPANY WAS CONSISTENTLY
09:48AM 5 RUNNING SHORT ON EDISON DEVICES BECAUSE THEY WOULD FAIL QUALITY
09:48AM 6 CONTROL SO FREQUENTLY, BECAUSE THEY WOULD BREAK DOWN AND
09:48AM 7 DISPLAY OTHER ERRORS SO FREQUENTLY. YOU KNOW THAT A LACK OF
09:48AM 8 EDISONS WAS ONE OF THE REASONS WHY THE COMPANY WAS HAVING
09:48AM 9 PROBLEMS EVEN PROCESSING THE AMOUNT OF TESTS THAT IT WAS
09:49AM 10 GIVING.

09:49AM 11 AND THE PRACTICE THAT THEY HAD OF GROUPING THESE DEVICES
09:49AM 12 IN GROUPS OF THREE WOULD HAVE COMPOUNDED THAT PROBLEM. THINK
09:49AM 13 ABOUT HOW MUCH WORSE IT WOULD HAVE BEEN BECAUSE EACH TEST HAD
09:49AM 14 TO BE THREE DEVICES AND NOT JUST ONE. WHY WOULD THEY DO THAT
09:49AM 15 UNLESS THEY NEEDED TO DO THAT? WHY WOULD THEY DO THAT IF ONE
09:49AM 16 DEVICE WAS CAPABLE OF RETURNING A RELIABLE RESULT?

09:49AM 17 WHEN IT COMES TO QUANTIFYING THIS PROBLEM OF QUALITY
09:49AM 18 CONTROL FAILURES, YOU SAW EXHIBITS LIKE THIS. THIS IS 1633.
09:49AM 19 AND IT RELATES TO QUALITY CONTROL FAILURE RATES FOR THE MONTH
09:49AM 20 OF MARCH 2014.

09:49AM 21 AND YOU SEE HERE THAT FOR THESE ASSAYS, ALL OF WHICH WERE
09:49AM 22 RUN ON THE THERANOS ANALYZER, QUALITY CONTROL FAILED AT A RATE
09:49AM 23 FREQUENTLY OVER 20 PERCENT AND SOMETIMES APPROACHING 45 OR EVEN
09:49AM 24 EXCEEDING 50 PERCENT.

09:50AM 25 THINK ABOUT WHAT THAT MEANS FOR THAT TT3 ASSAY, MORE THAN

09:50AM 1 HALF OF THE TIME WHEN THERANOS RAN A CHECK TO SEE WHETHER THE
09:50AM 2 ASSAY COULD RETURN AN ACCURATE RESULT, IT FAILED. MORE THAN
09:50AM 3 HALF OF THE TIME.

09:50AM 4 AND YOU SEE THAT THE OVERALL QUALITY CONTROL FAILURE RATE
09:50AM 5 WAS ABOUT 26 PERCENT. DR. ROSENDORFF TOLD YOU THAT THIS FAR,
09:50AM 6 FAR EXCEEDED WHAT HE WAS USED TO SEEING WITH NONCONVENTIONAL
09:50AM 7 THERANOS MACHINES.

09:50AM 8 ALSO IN EVIDENCE IS A PRESENTATION FROM SOMEONE NAMED
09:50AM 9 LANGLEY GEE AT THERANOS, WHICH PROVIDES SOME DIFFERENT NUMBERS.
09:50AM 10 I BELIEVE IT INDICATES A 2.9 PERCENT QUALITY CONTROL FAILURE
09:50AM 11 RATE FOR A CATEGORY OF DEVICES AT THERANOS AND A FAILURE RATE
09:50AM 12 SIGNIFICANTLY UNDER 1 PERCENT FOR THE CONVENTIONAL NON-THERANOS
09:50AM 13 ANALYZERS. SO A COUPLE OF THINGS TO NOTE THERE.

09:50AM 14 FIRST OF ALL, IF YOU LOOK AT THAT EXHIBIT, YOU'LL NOTE
09:51AM 15 THAT THE CATEGORY WITH THE 2.9 PERCENT FAILURE RATE INCLUDES
09:51AM 16 NOT JUST EDISONS, BUT IT ALSO APPEARS TO INCLUDE THE THERANOS
09:51AM 17 MODIFIED CONVENTIONAL DEVICES. SO IT'S NOT NECESSARILY
09:51AM 18 INCONSISTENT WITH THIS.

09:51AM 19 AND WHAT THAT WOULD MEAN SHOULD NOT SURPRISE YOU, WHICH IS
09:51AM 20 THAT THE COMMERCIAL DEVICES, EVEN THE THERANOS MODIFIED ONES,
09:51AM 21 WERE MORE RELIABLE THAN THE EDISONS WHEN IT CAME TO PASSING
09:51AM 22 QUALITY CONTROL.

09:51AM 23 WHAT THAT ALSO SHOWS YOU IS THE RATIO BETWEEN QUALITY
09:51AM 24 CONTROL FAILURE RATES FOR THE THERANOS-SPECIFIC DEVICES AND THE
09:51AM 25 NON-THERANOS-SPECIFIC DEVICES, WHICH ACCORDING TO THAT SHOW YOU

09:51AM 1 THAT THERANOS DEVICES FAILED QUALITY CONTROL MORE THAN THREE
09:51AM 2 TIMES AS OFTEN AS THE UNMODIFIED COMMERCIAL DEVICES.

09:51AM 3 WHAT DOES THIS MEAN, THOUGH? DO FAILURES IN QUALITY
09:51AM 4 CONTROL ACTUALLY TRANSLATE TO PROBLEMS WITH PATIENT TEST
09:52AM 5 ACCURACY? AND THERE SEEMS TO BE SOME DISPUTE ON THIS POINT,
09:52AM 6 BUT NOT ACCORDING TO WHAT THE WITNESSES SAID, NOT ACCORDING TO
09:52AM 7 THE ACTUAL EVIDENCE.

09:52AM 8 DR. ROSENDORFF WAS ASKED WERE QUALITY CONTROL FAILURE
09:52AM 9 RATES LIKE THESE CONCERNING TO YOU?

09:52AM 10 HE SAID YES.

09:52AM 11 HE EXPLAINED IF QUALITY CONTROL IS FAILING HALF OF THE
09:52AM 12 TIME, OR 50 PERCENT OF THE TIME, IT INDICATES THAT THE PATIENT
09:52AM 13 RESULT WOULD BE INACCURATE HALF OF THE TIME.

09:52AM 14 DURING HIS CLOSING MR. COOPERSMITH CALLED THIS IDEA
09:52AM 15 "BIZARRE" I THINK WAS THE WORD THAT HE USED, AND HE SAID THERE
09:52AM 16 IS NO LOGIC TO IT.

09:52AM 17 AND I WILL REMIND YOU IT IS UP TO YOU TO WEIGH WITNESS
09:52AM 18 CREDIBILITY, BUT I'D URGE YOU TO BE CAUTIOUS WHEN A LAWYER ASKS
09:52AM 19 YOU TO ACCEPT HIS JUDGMENT ON A TECHNICAL SPECIALIZED ISSUE AND
09:52AM 20 TO ACCEPT THAT JUDGMENT OVER THE TESTIMONY OF A WITNESS WHO
09:52AM 21 DOES THIS FOR A LIVING WHO IS A MEDICAL DOCTOR, WHO IS A
09:52AM 22 CLINICAL PATHOLOGIST AND A LAB DIRECTOR.

09:53AM 23 I'LL ALSO REMIND YOU THAT DR. ROSENDORFF WAS NOT THE ONLY
09:53AM 24 ONE WHO SAID THIS. LET'S LOOK AT ONE MORE QUOTE FROM HIM.

09:53AM 25 HE WAS ASKED ABOUT WHETHER THE PRACTICE OF NOT USING A

09:53AM 1 DEVICE WHEN IT FAILED QUALITY CONTROL GOT RID OF HIS CONCERNS
09:53AM 2 ABOUT PATIENT TESTING ACCURACY?

09:53AM 3 HE SAID NO BECAUSE EVEN A BROKEN CLOCK IS CORRECT TWICE A
09:53AM 4 DAY.

09:53AM 5 THE POINT THERE IS THAT IF YOU ARE ABLE TO DETERMINE
09:53AM 6 SOMETIMES WHETHER A TEST IS PROVIDING RELIABLE RESULTS OR NOT,
09:53AM 7 AND IT'S FAILING HALF OF THE TIME, THAT SHOULD GIVE YOU
09:53AM 8 CONCERNS ABOUT WHEN YOU'RE TESTING PATIENTS AND YOU CAN'T KNOW,
09:53AM 9 AS WE DISCUSSED BEFORE, WHETHER A GIVEN RESULT IS ACCURATE OR
09:53AM 10 NOT.

09:53AM 11 AND DR. ROSENDORFF ALSO CONFIRMED THAT WHEN YOU RUN A
09:53AM 12 PATIENT SAMPLE, THERE'S NOT A WAY TO KNOW RIGHT AWAY WHETHER A
09:54AM 13 RESULT IS ACCURATE.

09:54AM 14 DR. PANDORI SAID SOMETHING SIMILAR. HE SAID, WHEN QUALITY
09:54AM 15 CONTROL IS FAILING, THAT MEANS THAT THE TESTS ARE HAVING
09:54AM 16 DIFFICULTY ACCURATELY MEASURING SOMETHING ON A ROUTINE BASIS.
09:54AM 17 THE EQUIPMENT MIGHT NOT ONLY FAIL A LOT, BUT BE INACCURATE.

09:54AM 18 HE WAS ASKED WHETHER THAT POOR QUALITY CONTROL PERFORMANCE
09:54AM 19 CAUSED HIM CONCERNS ABOUT THE ACCURACY OF RESULTS THAT WERE
09:54AM 20 GOING OUT TO PATIENTS?

09:54AM 21 HE SAID, YOU ASKED ME IF IT LED TO MY CONCERN ABOUT THE
09:54AM 22 ACCURACY OF TEST RESULTS THAT WERE GOING OUT FROM THAT
09:54AM 23 EQUIPMENT?

09:54AM 24 AND THE ANSWER IS, YES, IT DID RESULT IN A CONCERN ON MY
09:54AM 25 PART.

1 SO WHILE DEFENSE COUNSEL MIGHT NOT BE WORRIED ABOUT THIS
2 QUALITY CONTROL DATA, THE PEOPLE WHOSE JOB IT WAS TO LOOK AT IT
3 AND DECIDE WHETHER THIS EQUIPMENT WAS GOOD ENOUGH TO USE ON
4 PATIENTS WERE VERY CONCERNED. THAT'S WHAT SHOULD COUNT IN YOUR
5 MINDS. BY THE WAY, YOUR COMMON SENSE SHOULD ALSO TELL YOU THAT
6 THE WITNESSES ARE RIGHT ON THIS ISSUE.

7 MR. COOPERSMITH'S THEORY SEEMS TO BE ONCE A BAD EDISON IS
8 IDENTIFIED, IT CAN SIMPLY BE TAKEN OUT OF USE ON PATIENTS AND
9 THAT SOLVES THE PROBLEM. THAT ASSUMES, THOUGH, THAT ALL YOU'RE
10 TRYING TO DO IS IDENTIFY THE GOOD EDISONS AND THE BAD EDISONS,
11 BUT THE EVIDENCE SHOWS THAT'S NOT HOW THIS WORKED. IT'S NOT
12 THE CASE THAT SOME OF THE DEVICES WERE SIMPLY BAD AND THEY
13 NEEDED TO BE REMOVED.

14 AND THE REASON YOU KNOW THAT IS THAT THE QUALITY CONTROL
15 PERFORMANCE STAYED POOR.

16 SO IF IT HAD BEEN THE CASE THAT THIS WAS JUST A QUESTION
17 OF IDENTIFYING, OKAY, WELL, EDISONS 3, 5, AND 10 DON'T APPEAR
18 TO BE WORKING, LET'S STOP USING THEM. IF THAT'S WHAT THIS IS
19 ABOUT, THE QUALITY PERFORMANCE WOULD HAVE IMPROVED OVER TIME.
20 BUT MULTIPLE WITNESSES TOLD YOU THAT THE QUALITY CONTROL
21 PERFORMANCE STAYED BAD. THAT MEANS THAT THIS PROBLEM DIDN'T
22 HAVE A SOLUTION, AT LEAST NOT ONE THAT INVOLVED CONTINUING TO
23 USE THIS FLAWED TECHNOLOGY.

24 YOU'LL ALSO RECALL THAT SARAH BENNETT FROM CMS TESTIFIED
25 THAT SHE FOUND THE COMPANY WAS NOT ALWAYS FOLLOWING THE QUALITY

09:56AM 1 CONTROL PROCESS, AND SHE WAS AWARE THAT THE COMPANY HAD
09:56AM 2 REPORTED PATIENT RESULTS AFTER QC FAILURE, AND THAT'S IN HER
09:56AM 3 TESTIMONY.

09:56AM 4 LET'S TALK ABOUT INACCURATE RESULTS AS WELL. BECAUSE
09:56AM 5 THERE IS EVIDENCE OF THIS. YOU HAVE SEEN MULTIPLE PATIENTS WHO
09:56AM 6 GOT INACCURATE RESULTS FROM THERANOS THAT COULD NOT BE TRUSTED.

09:56AM 7 THE DEFENSE HAS SAID MULTIPLE TIMES THAT ALL LABS HAVE
09:56AM 8 ERRORS, BUT THINK ABOUT THE NATURE OF THE ERRORS THAT YOU SAW
09:56AM 9 IN THIS CASE.

09:56AM 10 I'D LIKE TO START WITH BRITTANY GOULD AND HCG. AND WHEN
09:57AM 11 IT CAME TO THIS DATA, THE BEST THE DEFENSE CAN OFFER YOU IS
09:57AM 12 THAT THIS MIGHT NOT HAVE BEEN A PROBLEM WITH THE TECHNOLOGY, IT
09:57AM 13 MIGHT HAVE BEEN CLERICAL ERRORS INSTEAD, AND IT WOULD TAKE
09:57AM 14 MULTIPLE CLERICAL ERRORS TO EXPLAIN THIS AS YOU'LL RECALL.

09:57AM 15 ONE ERROR WOULD BE REPORTING THE SAME VALUE TWICE, AND
09:57AM 16 THEN THE SECOND ERROR WOULD BE IN ONE OF THOSE TIMES MAKING A
09:57AM 17 DECIMAL POINT ERROR AND REPORTING SOMETHING THAT WAS 100 TIMES
09:57AM 18 LOWER THAN IT SHOULD HAVE BEEN.

09:57AM 19 SO A COUPLE OF THINGS TO KEEP IN MIND THERE BECAUSE THIS
09:57AM 20 IS ALL PART OF THE DEFENSE'S CLAIM THAT THERE WAS ACTUALLY NO
09:57AM 21 FUNDAMENTAL PROBLEM WITH HCG TESTING AT THERANOS, WHICH IS NOT
09:57AM 22 TRUE. THE EVIDENCE SHOWS EXACTLY THE OPPOSITE.

09:57AM 23 ONE THING TO NOTE IS THAT EACH THAT VALUE OF 12,000,
09:57AM 24 DR. ZACHMAN TESTIFIED IT WOULD NOT MAKE SENSE ON EITHER DATE OF
09:58AM 25 OCTOBER 2ND OR OCTOBER 4TH. AND THAT'S CONSISTENT WITH WHAT

09:58AM 1 YOU KNOW NOW ABOUT HCG VALUES, WHICH IS THAT THEY'RE SUPPOSED
09:58AM 2 TO DOUBLE APPROXIMATELY EVERY 48 HOURS.

09:58AM 3 SO IF YOU LOOK AT THESE NUMBERS, DR. ZACHMAN TOLD YOU THAT
09:58AM 4 IF YOU GET RID OF THE THERANOS RESULTS, ALL OF THEM, THE QUEST
09:58AM 5 DIAGNOSTIC RESULTS MAKE SENSE TOGETHER BECAUSE THEY GO FROM
09:58AM 6 1,000 AND THEN SIX DAYS LATER THEY'RE AT APPROXIMATELY 10,000.

09:58AM 7 SO YOU WOULD EXPECT THE VALUES TO BE ON OCTOBER 2ND ABOUT
09:58AM 8 2,000 OR 3,000; ON OCTOBER 4TH YOU WOULD WANT TO SEE 4,000 OR
09:58AM 9 5,000; AND THEN SURE ENOUGH ON OCTOBER 6TH, 9,000 PUTS IT IN
09:58AM 10 THAT ROUGH RANGE OF DOUBLING EVERY 48 HOURS.

09:58AM 11 SO EVEN IF THE THERANOS VALUE OF 12,000 WAS THE CORRECT
09:58AM 12 VALUE OR THAT COMPANY MEANT TO REPORT, IT WOULD STILL BE AN
09:59AM 13 OUTLIER. IT WOULD STILL BE SOMETHING THAT DIDN'T MAKE SENSE IN
09:59AM 14 THE COURSE OF WHAT WOULD OTHERWISE BE THIS HEALTHY PREGNANCY.

09:59AM 15 YOU ALSO KNOW THAT THIS WAS NOT AN ISOLATED EXAMPLE, THAT
09:59AM 16 MS. GOULD WAS NOT THE ONLY ONE WHO GOT A TROUBLING OR
09:59AM 17 INACCURATE HCG RESULT. YOU SAW MULTIPLE EXAMPLES OF THAT IN
09:59AM 18 THE EVIDENCE, AND NOT JUST FROM THE WITNESSES WHO TESTIFIED,
09:59AM 19 BUT YOU SAW WRITTEN RECORDS OF THAT AS WELL.

09:59AM 20 IT GOT TO THE POINT IN LATE MAY OF 2014 DR. ROSENDORFF
09:59AM 21 DECIDED TO REQUIRE OR DECREE THAT HCG TESTING NEEDED TO STOP ON
09:59AM 22 THE EDISON DEVICES. AND THE DEFENSE CLAIMS THAT THAT PROBLEM
09:59AM 23 WAS LIMITED TO THAT TIME PERIOD, AND THEY ALSO CLAIM THAT
09:59AM 24 DR. ROSENDORFF SUBSEQUENTLY WENT BACK ON THAT DECISION AND
09:59AM 25 APPROVED HCG TESTING RESUMING.

09:59AM 1 YOU KNOW THAT'S NOT TRUE BECAUSE HE WAS ASKED ABOUT IT BY
09:59AM 2 BOTH SIDES WHEN HE WAS ON THE STAND. THERE'S NO EVIDENCE THAT
10:00AM 3 HE APPROVED OR RESCINDED THAT DECISION.

10:00AM 4 AND EMAILS SHOW -- OR AN EMAIL SHOWS THAT HE HAD TO ASK
10:00AM 5 WEEKS AFTER THIS WHAT DEVICE WAS BEING USED TO TEST HCG. IF IT
10:00AM 6 HAD BEEN HIS DECISION, HE WOULD HAVE NEVER NEEDED TO ASK. AND
10:00AM 7 IT WAS MR. BALWANI WHO TOLD HIM AT THAT TIME AFTER
10:00AM 8 DR. ROSENDORFF HAD DECIDED TO STOP HCG TESTING ON EDISON, THAT
10:00AM 9 HCG TESTING WAS HAPPENING ON THE EDISON. SO CERTAINLY HE KNEW.

10:00AM 10 BUT AS HE TESTIFIED TO YOU, HE UNDERSTOOD THAT HE HAD
10:00AM 11 LIMITED POWER AT THE COMPANY, THAT THESE DECISIONS WERE NOT
10:00AM 12 NECESSARILY HIS TO MAKE. HE ANSWERED TO MR. BALWANI AS THE
10:00AM 13 PERSON RUNNING THE LAB. SO HE KNEW THAT THE DECISION WAS OUT
10:00AM 14 OF HIS HANDS AT THIS POINT.

10:00AM 15 SPEAKING OF MS. GOULD, MR. COOPERSMITH ALSO TALKED ABOUT
10:01AM 16 THE PRACTICE OF WHERE DR. ZACHMAN WORKS AND THE EXTENT TO WHICH
10:01AM 17 THEIR PATIENTS KEPT RECEIVING RESULTS FROM THERANOS.

10:01AM 18 A COUPLE OF THINGS I WOULD LIKE YOU TO KEEP IN MIND THERE.

10:01AM 19 EXHIBIT 20073 IS THE CHART THAT THE DEFENSE REFERENCED
10:01AM 20 THERE, AND IT SHOWS THERANOS TEST RESULTS RECEIVED BY PATIENTS
10:01AM 21 OF THIS PRACTICE, SOUTHWEST.

10:01AM 22 ONE IMPORTANT THING TO NOTE IS THAT THAT SLIDE OR THAT
10:01AM 23 EXHIBIT OR THAT CHART IS LIMITED TO DATA AFTER AUGUST OF 2015.
10:01AM 24 WHY IS THAT IMPORTANT?

10:01AM 25 YOU'LL REMEMBER THIS, EXHIBIT 4533. THIS SHOWS YOU THAT

10:01AM 1 FOR HCG IN PARTICULAR, THERANOS STOPPED USING THE EDISON TO
10:01AM 2 TEST IT, NOT WHEN DR. ROSENDORFF DECIDED TO, NOT WHEN HE SAID
10:01AM 3 THAT'S WHAT SHOULD HAPPEN, BUT IN JANUARY OF 2015. SO SEVEN
10:01AM 4 MONTHS BEFORE THE DEFENSE'S EVIDENCE BEGINS ON THOSE SOUTHWEST
10:02AM 5 TESTS, THERANOS STOPPED USING THAT DEVICE AT ALL FOR HCG.

10:02AM 6 SO WHEN THEY SAY DR. ZACHMAN MUST HAVE REVIEWED ALL OF
10:02AM 7 THESE RESULTS AND SHE DIDN'T FIND ANY OTHER PROBLEMS TO NOTE,
10:02AM 8 YOU SHOULDN'T BE TOO SURPRISED BY THAT BECAUSE ALL OF THE HCG
10:02AM 9 RESULTS IN THAT CHART WOULD HAVE BEEN PERFORMED ON A DEVICE
10:02AM 10 OTHER THAN THE EDISON WHICH WAS CREATING ALL OF THE PROBLEMS
10:02AM 11 DURING THE TIME PERIOD THAT WE'RE TALKING ABOUT. SO IT HAS
10:02AM 12 LIMITED VALUE FOR THAT PURPOSE.

10:02AM 13 TO THE EXTENT THAT THE DEFENSE WANTS YOU TO LOOK AT THAT
10:02AM 14 AND THINK THAT DR. ZACHMAN WASN'T SERIOUS ABOUT HER CONCERNS OR
10:02AM 15 THE PRACTICE DISAGREED WITH HER, YOU CAN'T RELY ON THAT FOR
10:02AM 16 THAT EITHER.

10:02AM 17 YOU HEARD DR. ZACHMAN'S TESTIMONY THAT IT'S NOT ALWAYS UP
10:02AM 18 TO THE DOCTOR WHERE THE PATIENT GOES, AND SOMETIMES PATIENTS
10:02AM 19 DECIDE WHERE TO GO.

10:02AM 20 SO WHILE SHE NEVER SENT ANOTHER PATIENT TO THERANOS AND
10:02AM 21 WHILE SHE, IN FACT, RECOMMENDED TO HER PATIENTS THAT THEY NOT
10:02AM 22 GO THERE, IT WAS ULTIMATELY UP TO THEM.

10:03AM 23 SO YOU HEARD THAT TESTIMONY. YOU KNOW THAT EVERY LINE IN
10:03AM 24 THAT CHART DOESN'T NECESSARILY REPRESENT A CASE WHERE A
10:03AM 25 SOUTHWEST DOCTOR DECIDED TO USE THERANOS. AND YOU KNOW FROM

DR. ZACHMAN'S TESTIMONY THAT EVENTUALLY THE PRACTICE DID DECIDE TO STOP USING THE LAB ALTOGETHER.

YOU ALSO KNOW THAT THE PROBLEMS WITH HCG WERE NOT LIMITED TO LATE MAY OF 2014.

IF YOU NEED REMINDING, THERE WERE EXHIBITS SHOWING THAT IN JUNE OF 2014, SPECIFICALLY EXHIBITS 5421 AND 5422, THERE CONTINUED TO BE SERIOUS PROBLEMS WITH QC FAILING FOR HCG ON THE EDISON.

5421 IS ABOUT QUALITY CONTROL FAILURES ON JUNE 25TH OF 2014, ALMOST A MONTH AFTER THE DEFENSE SAYS THIS PROBLEM WAS RESOLVED. AND IN THAT EMAIL IT'S NOTED THAT QUALITY CONTROL TESTING ON 33 EDISONS RESULTED IN 20 PASSING AND 9 FAILING FOR ASSAYS, INCLUDING HCG.

THAT SAME EMAIL NOTED THAT ALL QUALITY CONTROLS PASSED UPSTAIRS. AND YOU'LL RECALL THAT UPSTAIRS WAS THE PORTION OF THE LAB WHERE THE NON-THERANOS DEVICES WERE USED. SO, AGAIN, NO SURPRISE THERE.

5422 IS A JUNE 28TH EMAIL THAT NOTES ON THAT DAY ONLY 17 OUT OF 35 EDISONS PASSED QUALITY CONTROL. THAT'S LESS THAN HALF.

AND AT THAT TIME, AS A RESULT OF THOSE QUALITY CONTROL FAILURES, THE HCG WAS NOT EVEN AVAILABLE TO BE PERFORMED, AGAIN, NOT BECAUSE THEY WERE HONORING DR. ROSENDORFF'S CHOICE TO CEASE TESTING, BUT BECAUSE IT FAILED QUALITY CONTROL AGAIN.

MR. COOPERSMITH REFERENCED A FEW TIMES SOME PURPORTED

10:05AM 1 PROFICIENCY TESTING OR ALTERNATIVE ASSESSMENT OF PROFICIENCY
10:05AM 2 TESTING THAT THERANOS CONDUCTED ON THE HCG ASSAY. I JUST WANT
10:05AM 3 TO POINT OUT ONE THING HERE. THE DEFENSE WAS HAPPY TO POINT
10:05AM 4 OUT THIS 100 PERCENT SCORE THAT THERANOS CLAIMED, BUT LOOK AT
10:05AM 5 THE INDIVIDUAL TESTS. YOU'LL SEE THAT YOU HAVE TWO ROWS. ONE
10:05AM 6 SHOWS THE PREDICATE OR NON-THERANOS RESULTS FOR THESE SAMPLES
10:05AM 7 AND THE ONE BELOW IT SHOWS THE THERANOS RESULTS. AND THE
10:05AM 8 QUESTION IS HOW CLOSELY DO THEY MATCH WITH THE ASSUMPTION THAT
10:05AM 9 THE PREDICATE RESULT, THE NON-THERANOS RESULT IS RELIABLE?

10:05AM 10 ONLY ONE OF THESE RESULTS ACTUALLY HAS VALUES. THE OTHERS
10:05AM 11 USE SAMPLES THAT ARE SO LOW IN CONCENTRATION THAT THE PREDICATE
10:05AM 12 DEVICE SIMPLY SAYS LESS THAN ONE, AND THE THERANOS RETURNS OR
10:05AM 13 THE THERANOS DEVICE RETURNS A RESULT JUST SAYING THAT IT'S
10:05AM 14 BELOW LLOQ, LOWER LIMIT OF QUANTIFICATION, YOU REMEMBER THAT'S
10:06AM 15 WHAT THAT STOOD FOR.

10:06AM 16 SO, IN OTHER WORDS, THE THERANOS DEVICE IS SAYING HERE THE
10:06AM 17 CONCENTRATION IS TOO FAINT FOR ME TO ASSIGN A NUMBER, AND
10:06AM 18 THAT'S WHAT IT'S SAYING FOR FOUR OF THE FIVE RESULTS, AND
10:06AM 19 THAT'S 100 PERCENT SCORE IN THERANOS'S VIEW.

10:06AM 20 YOU KNOW FROM THE TESTIMONY THAT WHEN A PATIENT IS
10:06AM 21 PREGNANT, IT'S CRITICAL TO BE ABLE TO DETERMINE THE STATUS AND
10:06AM 22 HEALTH OF THE PREGNANCY WHEN THE HCG VALUES ARE IN THE
10:06AM 23 THOUSANDS. WE HEARD ABOUT SITUATIONS WHERE VALUES IN THE FOUR
10:06AM 24 AND FIVE FIGURES WERE RELIED UPON BY PRACTITIONERS TO ESTABLISH
10:06AM 25 THE STATUS OF A PREGNANCY.

10:06AM 1 THE ABILITY OF THERANOS'S TECHNOLOGY TO TEST IN THAT RANGE
10:06AM 2 IS NOT BEING MEASURED BY THIS TEST, SO YOU SHOULD VIEW THIS AS
10:06AM 3 HAVING VERY LIMITED VALUE.

10:06AM 4 HCG, OF COURSE, WASN'T THE ONLY TEST THAT THERANOS HAD
10:06AM 5 PROBLEMS WITH. AND YOU ALSO HEARD ABOUT PSA AND SEVERAL OTHER
10:07AM 6 ASSAYS THAT THERANOS COULDN'T DO RELIABLY.

10:07AM 7 I JUST WANT TO REMIND YOU THAT WHEN IT COMES TO
10:07AM 8 DR. ELLSWORTH'S PSA RESULTS, HE DID NOT JUST GET ONE BAD RESULT
10:07AM 9 BUT TWO IN A ROW AND THESE WERE THE RESULTS THAT WERE PERFORMED
10:07AM 10 ON THE THERANOS TECHNOLOGY IN CONTRAST TO THE RESULTS THAT WERE
10:07AM 11 PERFORMED USING A NON-THERANOS DEVICE.

10:07AM 12 WHAT DOES THAT TELL YOU? IT TELLS YOU SOMETHING ABOUT THE
10:07AM 13 DEFENSE'S ARGUMENT THAT EVERY LAB EXPERIENCE HAS ERRORS. YOU
10:07AM 14 COULD TAKE THAT AND USE IT TO DISCOUNT SITUATIONS WHERE A
10:07AM 15 PATIENT ONLY HAS ONE ERRONEOUS RESULT FROM THE COMPANY, BUT IN
10:07AM 16 THIS CASE WHERE LIGHTNING STRIKES TWICE, YOU NEED TO START
10:07AM 17 THINKING ABOUT WHETHER THIS IS A COINCIDENCE, WHETHER THIS IS A
10:07AM 18 RARE OCCURRENCE, OR WHETHER THIS REALLY SAYS SOMETHING CLEAR
10:07AM 19 ABOUT FUNDAMENTAL PROBLEMS IN THE METHOD BEING USED TO PERFORM
10:07AM 20 THOSE TESTS.

10:07AM 21 BOTH MS. GOULD'S DOCTOR AND DR. ELLSWORTH'S DOCTOR ALSO
10:08AM 22 TOLD YOU THAT THEY HAD NEVER SEEN PROBLEMS WITH THESE
10:08AM 23 PARTICULAR TESTS LIKE THE ONES THAT THEY SAW WHEN THEY WENT TO
10:08AM 24 THERANOS. THAT SHOULD MEAN SOMETHING TO YOU AS WELL.

10:08AM 25 YOU ALSO SAW NUMEROUS INSTANCES WHERE INACCURATE TEST

1 RESULTS WERE BEING BROUGHT TO THE ATTENTION OF THERANOS,
2 INCLUDING DIRECTLY TO MR. BALWANI. AND YOU SAW THE INTERNAL
3 EMAILS WITH HOW THE COMPANY STRUGGLED WITH HOW TO DEAL WITH
4 THOSE. YOU'VE SEEN THE RECORDS RELATING TO THOSE.

5 SO IT'S NOT THE CASE THAT THE GOVERNMENT HAS ONLY
6 PRESENTED FOUR EXAMPLES OF INACCURATE PATIENT TEST RESULTS.
7 YOU'VE SEEN MANY OF THEM. AND IT'S ALSO NOTABLE THAT EVEN IN
8 THERANOS'S DEMOS, WHEN THEY WERE TRYING THEIR HARDEST TO
9 IMPRESS VIP'S OR OTHER INFLUENTIAL INVESTORS, EVEN IN THOSE
10 CASES THEY COULDN'T GET THEIR TESTS RIGHT.

11 YOU SAW INSTANCES WHERE DANIEL YOUNG HAD TO COME IN AND
12 CORRECT TESTS BEFORE THEY WERE READY TO GO TO THESE VIP'S. YOU
13 SAW SITUATIONS WHERE RESULTS HAD TO BE REMOVED FROM THOSE
14 REPORTS BEFORE THEY COULD GO TO THESE PEOPLE WHO WERE TRYING
15 TO -- WHO THE COMPANY WAS TRYING TO IMPRESS. SO EVEN IN THAT
16 SITUATION THE COMPANY FACED INCONSISTENCIES AND PROBLEMS IN ITS
17 TEST RESULTS.

18 THE DEFENSE CLAIMS THAT YOU HAVE NOT SEEN ENOUGH
19 INACCURATE RESULTS TO PROPERLY JUDGE WHETHER THERANOS HAD
20 ACCURACY PROBLEMS. THEY HAVE IT EXACTLY BACKWARDS THOUGH.

21 YOU DON'T KNOW ABOUT ACCURACY PROBLEMS AT THERANOS SIMPLY
22 BECAUSE OF THE INACCURATE RESULTS, RATHER YOU KNOW ABOUT THEM
23 THE SAME WAY MR. BALWANI DID WHEN HE WAS AT THE COMPANY. YOU
24 KNOW BECAUSE OF THE POOR QUALITY CONTROL PERFORMANCE, BECAUSE
25 OF THE LACK OF APPROPRIATE PROFICIENCY TESTING THAT WAS

10:09AM 1 HAPPENING, BECAUSE OF THE OTHER RELIABILITY ISSUES WITH THE
10:09AM 2 PRODUCT.

10:09AM 3 AND WHEN YOU THINK ABOUT THE INACCURATE RESULTS, THEY
10:10AM 4 SERVE REALLY ONLY AS CONFIRMATION THAT BECAUSE THE INGREDIENTS
10:10AM 5 GOING INTO THIS TESTING PROCESS WERE FLAWED, THAT WAS THE
10:10AM 6 UNAVOIDABLE RESULT. SO YOU SHOULD NOT BE SURPRISED THAT
10:10AM 7 INACCURATE RESULTS RESULTED FROM THIS RECIPE BECAUSE WHAT WAS
10:10AM 8 GOING IN WAS A SERIOUSLY FLAWED TESTING METHOD AND PLATFORM.

10:10AM 9 THERE WERE OTHER PROBLEMS WITH THERANOS'S TECHNOLOGY
10:10AM 10 BESIDES POOR ACCURACY. AND THE EVIDENCE SHOWED THAT THAT
10:10AM 11 RELATED TO THINGS LIKE THE LOW SPEED WITH WHICH THE DEVICE
10:10AM 12 COULD ACTUALLY PROCESS A SAMPLE AND THE LOW THROUGHPUT, THE
10:10AM 13 FACT THAT, IN ONE WITNESS'S WORDS, THE EDISON DEVICE COULD ONLY
10:10AM 14 RUN ONE TEST PER HOUR IF YOU WERE LUCKY, WHEREAS A COMPETING
10:10AM 15 DEVICE LIKE THE ADVIA 1800 COULD RUN A THOUSAND.

10:11AM 16 YOU ALSO HEARD THAT USING THE THERANOS METHOD, INCLUDING
10:11AM 17 ON THE EDISON, REQUIRED OTHER STEPS. IT WASN'T A ONE STEP
10:11AM 18 PROCESS. FOR EXAMPLE, IT REQUIRES DILUTION OF THE SAMPLE ON A
10:11AM 19 LARGE DEVICE CALLED A TECAN. YOU SHOULD THINK ABOUT HOW THAT
10:11AM 20 NEED AFFECTS THE TRUTH OF CLAIMS THAT THE MILITARY WAS GOING TO
10:11AM 21 USE THIS ON THE BATTLEFIELD, OR THAT IT COULD BE USED IN A
10:11AM 22 HELICOPTER.

10:11AM 23 WHAT USE IS A SMALL PORTABLE DEVICE IF IT HAS TO BE USED
10:11AM 24 IN GROUPS OF THREE, IF IT HAS TO BE USED ALONG WITH A MUCH
10:11AM 25 LARGER DEVICE THAT DILUTES THE SAMPLE BEFOREHAND? WAS THIS

10:11AM 1 REALLY A SELF-CONTAINED LAB IN A BOX THE WAY THE DEFENDANT WAS
10:11AM 2 REPRESENTING IT TO BE?

10:11AM 3 NO, IT WAS NOT.

10:11AM 4 YOU ALSO HEARD THE DEVICE BROKE DOWN FREQUENTLY AND HAD
10:11AM 5 FREQUENTLY MECHANICAL FAILURES. AND YOU HEARD THE EDISON WAS
10:11AM 6 NEVER USED FOR MORE THAN 12 TESTS IN THE THERANOS CLINICAL LAB,
10:11AM 7 A NUMBER THAT WOULD HAVE SURPRISED ANY INVESTOR WHO GAVE MONEY
10:12AM 8 TO THERANOS DURING THE RELEVANT TIME PERIOD.

10:12AM 9 THE DEFENSE NOW CLAIMS THAT THE FACT THAT ONLY 12 TESTS
10:12AM 10 WERE RUN ON THE EDISON AT THERANOS WAS A BUSINESS DECISION,
10:12AM 11 THAT IT DIDN'T HAVE ANYTHING TO DO WITH THE LIMITATIONS OF THE
10:12AM 12 DEVICE, BUT RATHER THAT WAS A DECISION THAT THERANOS MADE AFTER
10:12AM 13 ANALYZING BUSINESS CONCERNS.

10:12AM 14 THINK ABOUT WHETHER THAT HOLDS WATER THOUGH. FIRST OF
10:12AM 15 ALL, FROM A BUSINESS PERSPECTIVE, WHY USE THE EDISON AT ALL?
10:12AM 16 HAVE YOU HEARD A SINGLE THING THROUGHOUT THE TRIAL THAT THE
10:12AM 17 EDISON DID BETTER THAN COMPETING DEVICES? DID THE EDISON HAVE
10:12AM 18 ANY ABILITY THAT A COMMERCIAL DEVICE, A NON-THERANOS DEVICE
10:12AM 19 COULDN'T MATCH? OR DID THE EVIDENCE TELL YOU THAT THE EDISON
10:12AM 20 WAS INFERIOR TO COMMERCIAL DEVICES IN EVERY WAY EXCEPT
10:12AM 21 PORTABILITY, AND PORTABILITY, OF COURSE, DIDN'T MATTER WITH
10:12AM 22 THERANOS'S BUSINESS MODEL OF HAVING A CENTRAL LAB WHERE ALL OF
10:12AM 23 THE TESTING WAS DONE IN HOUSE.

10:13AM 24 SO WHY USE THE EDISON AT ALL? WAS THAT A RATIONAL
10:13AM 25 DECISION? WAS THAT MR. BALWANI USING HIS BUSINESS SENSE? OR

1 WAS HE BEING STUBBORN? WAS HE INSISTING ON USING THE COMPANY'S
2 TECHNOLOGY, DESPITE THE ADVICE FROM INTERNAL SCIENTISTS, AND
3 DESPITE THE FACT THAT IT DIDN'T MAKE ANY SENSE TO USE THE
4 TECHNOLOGY WHEN IT WOULD HAVE BEEN MORE EFFICIENT AND EASIER TO
5 USE COMPETING TECHNOLOGY INSTEAD?

6 AND YOU'VE SEEN EMAILS AND YOU'VE HEARD TESTIMONY SHOWING
7 MR. BALWANI'S INSISTENCE ON USING THE EDISON AND HIS RETICENCE
8 TO TAKE ANY TEST OFF OF THAT PLATFORM AND PUT IT BACK ON A
9 NON-THERANOS DEVICE.

10 THE UNCONTROVERTED TESTIMONY ALSO IS THAT THE EDISON COULD
11 ONLY DO ONE CATEGORY OF ASSAYS. IT COULD ONLY DO IMMUNOASSAYS.

12 STILL THOUGH, THE DEFENSE SHOWED YOU THIS SLIDE IN ITS
13 CLOSING WHICH IS A THERANOS 4S, NOT THE EDISON. AND IT SHOWS
14 THE COMPONENTS IN THIS DEVICE. AND YOU'LL SEE IT INCLUDES
15 THINGS LIKE A CYTOMETER, WHICH WOULD BE USED TO RUN A TEST LIKE
16 A CBC, OR A COMPLETE BLOOD COUNT.

17 YOU KNOW THAT THE EDISON, THE DEVICE ACTUALLY USED FOR
18 PATIENT TESTING IN THE THERANOS LAB COULDN'T DO A CBC. IT
19 DIDN'T HAVE THAT PART IN IT. SO WHY ARE WE TALKING ABOUT THIS
20 DEVICE THAT THERANOS NEVER USED FOR PATIENT TESTING?

21 THE EVIDENCE ALSO TOLD YOU THAT THERANOS NEVER VALIDATED A
22 SINGLE TEST FOR USE ON THIS DEVICE WITHIN THE LAB.

23 THE DEFENSE ALSO SHOWED YOU THIS EXHIBIT, 7286, WHICH IS
24 AN EMAIL FROM DANIEL YOUNG TO MR. BALWANI BEFORE THE LAUNCH IN
25 2013 TALKING ABOUT TESTS THAT ARE BEING INTEGRATED ON THE

10:14AM 1 DEVICE. YOU SEE THAT LANGUAGE.

10:15AM 2 AND ONE OF THOSE TESTS IS CBC, COMPLETE BLOOD COUNT, OR
10:15AM 3 WHOLE BLOOD COUNT, WHICH YOU KNOW WOULD REQUIRE THAT CYTOMETER
10:15AM 4 DEVICE, WHICH THE EDISON DIDN'T HAVE.

10:15AM 5 THE EMAIL NOTES THAT THERE'S A GROUP AT THERANOS STILL
10:15AM 6 COMPLETING THE PRE-VALIDATION BEFORE MOVING THE TESTS TO CLIA
10:15AM 7 FOR VALIDATION. AND IT ALSO TALKS ABOUT RUNNING TNA, OR
10:15AM 8 NUCLEOTIDE AMPLIFICATION DNA TESTS ON THE 4S DEVICE NEXT WEEK.

10:15AM 9 SO MR. COOPERSMITH DIDN'T EXPLAIN THIS TO YOU, BUT THIS IS
10:15AM 10 TALKING ABOUT PREPARATIONS TO USE THE 4S DEVICE IN CONNECTION
10:15AM 11 WITH THE COMMERCIAL LAUNCH IN 2013.

10:15AM 12 YOU KNOW BASED ON THE OTHER EVIDENCE IN THIS CASE THAT
10:15AM 13 SOMETHING WENT WRONG WITH THAT PLAN. THAT NEVER HAPPENED. THE
10:15AM 14 COMPANY NEVER USED THE 4S TO RUN A SINGLE CLINICAL PATIENT
10:15AM 15 SAMPLE.

10:15AM 16 SO THIS EMAIL IS DISCUSSING A PLAN THAT NEVER ACTUALLY
10:15AM 17 CAME TO FRUITION, AND IT'S DISCUSSING THE HYPOTHETICAL OR
10:16AM 18 POSSIBLE ABILITIES OF A DEVICE THAT, AGAIN, THERANOS NEVER GOT
10:16AM 19 TO THE POINT WHERE IT COULD USE ON ACTUAL PATIENTS. SO THAT'S
10:16AM 20 IMPORTANT TO REMEMBER.

10:16AM 21 REMEMBER AGAIN THAT ONLY ONE DOZEN TESTS WERE EVER USED ON
10:16AM 22 THE EDISON IN THE LAB DESPITE ANY CLAIMS THAT THE DEVICE WAS
10:16AM 23 ACTUALLY CAPABLE OF MUCH MORE.

10:16AM 24 AND THIS IS KEY AS WELL. IT'S TIME TO START THINKING
10:16AM 25 ABOUT WHAT INVESTORS KNEW AT VARIOUS TIMES, AND IT'S IMPORTANT

10:16AM 1 TO REMEMBER THAT THESE THINGS THAT WE'VE BEEN TALKING ABOUT,
10:16AM 2 THE THINGS THAT YOU NOW KNOW ABOUT THERANOS, WERE NEVER
10:16AM 3 DISCLOSED TO INVESTORS. THE IMAGES, THE PICTURES THAT THEY HAD
10:16AM 4 IN THEIR MINDS ABOUT WHAT THE EDISON COULD DO DIFFERED GREATLY
10:16AM 5 FROM THE REALITY.

10:16AM 6 SO ALL OF THE LIMITATIONS ON THE DEVICE, THE THINGS THAT
10:16AM 7 IT COULD NOT DO, THAT INFORMATION WOULD HAVE BEEN SO VALUABLE
10:16AM 8 TO THOSE INVESTORS, WOULDN'T IT HAVE, IN MAKING THEIR DECISION
10:17AM 9 ON WHETHER TO WRITE LARGE CHECKS TO THE COMPANY? SHOULDN'T
10:17AM 10 THEY HAVE KNOWN WHAT THE DEVICE COULD NOT DO CONTRARY TO THE
10:17AM 11 CLAIMS THAT MR. BALWANI WAS MAKING?

10:17AM 12 YOU'VE ALSO HEARD EVIDENCE THAT MR. BALWANI AND MS. HOLMES
10:17AM 13 MISREPRESENTED TO INVESTORS THE NATURE OF THERANOS'S DEALING
10:17AM 14 WITH THE MILITARY. AND YOU HEARD THAT PEOPLE WERE LEFT WITH
10:17AM 15 THE IMPRESSION BECAUSE THEY WERE TOLD THAT THE THERANOS DEVICES
10:17AM 16 WERE BEING USED CLINICALLY BY THE MILITARY, AND YOU KNOW THAT'S
10:17AM 17 NOT THE CASE.

10:17AM 18 LET'S JUST GO QUICKLY THROUGH THE FOUR CONTACTS THAT
10:17AM 19 THERANOS HAD WITH THE MILITARY. WHEN IT CAME TO THE BURN
10:17AM 20 STUDY, EXHIBIT 7694 WILL SHOW YOU A FEW THINGS. FIRST, THAT
10:17AM 21 WAS NOT EXCLUSIVE TO THE MILITARY, THAT THE INDIVIDUALS BEING
10:17AM 22 TREATED WERE AT A VARIETY OF FACILITIES, INCLUDING MANY
10:17AM 23 CIVILIAN HOSPITALS; IT WILL SHOW YOU THAT ALL OF THE LOCATIONS
10:18AM 24 WERE IN THE U.S., SO NONE OF THIS WAS HAPPENING ON THE
10:18AM 25 BATTLEFIELD OR IN COMBAT LOCATIONS; YOU WILL SEE FROM THAT

10:18AM 1 EXHIBIT THAT THE TEST RESULTS WERE NOT USED TO ACTUALLY MAKE
10:18AM 2 TREATMENT DECISIONS FOR THE PEOPLE INVOLVED IN THE STUDY. SO
10:18AM 3 THIS WASN'T CLINICAL USE OF THE THERANOS TESTING. YOU WILL
10:18AM 4 ALSO SEE THAT THAT INCLUDED NO EVALUATION OF THE ACCURACY OF
10:18AM 5 THE THERANOS SYSTEM. THAT WASN'T THE POINT OF THIS.

10:18AM 6 THE POINT OF THIS TEST WAS TO TEST AN EXPERIMENTAL
10:18AM 7 TREATMENT NOT DEVELOPED BY THERANOS, NOT TO SEE WHETHER OR NOT
10:18AM 8 THE THERANOS DEVICE COULD RETURN A RELIABLE RESULT.

10:18AM 9 WHEN IT CAME TO SPECIAL OPERATIONS, YOU HEARD FROM
10:18AM 10 MR. EDLIN THAT THREE DEVICES WERE SENT TO KENTUCKY, BUT THEY
10:18AM 11 WERE NOT USED FOR TESTING. SO THAT NEVER WENT ANYWHERE.

10:18AM 12 WHEN IT CAME TO AFRICOM, YOU HEARD AGAIN FROM MR. EDLIN
10:18AM 13 THAT NO CLINICAL TESTING WAS DONE. IN THIS CASE THE POINT WAS
10:18AM 14 TO SEE WHETHER THE DEVICE COULD SURVIVE A TRIP THROUGH HARSH
10:19AM 15 CONDITIONS, NOT WHETHER IT COULD ACTUALLY RUN TESTS AND RETURN
10:19AM 16 RELIABLE RESULTS.

10:19AM 17 SO YOU SAW IN THE EVIDENCE THAT THAT WOULD HAVE BEEN THE
10:19AM 18 NEXT STEP WHEN IT CAME TO AFRICOM'S WORK WITH THE DEVICE, BUT
10:19AM 19 THEY NEVER GOT THERE.

10:19AM 20 YOU SAW EMAILS TALKING ABOUT THE POSSIBILITY OF RUNNING
10:19AM 21 ACTUAL CLINICAL SAMPLES AND GETTING CLINICAL RESULTS AT SOME
10:19AM 22 POINT IN THE FUTURE. THAT NEVER CAME TO BE.

10:19AM 23 THERE'S ALSO AN EMAIL IN CONNECTION WITH AFRICOM THAT
10:19AM 24 DISCUSSES THE DEVICE BEING TRANSPORTED ON WHAT THE MILITARY
10:19AM 25 CALLS AN UNPRESSURIZED AIRCRAFT.

10:19AM 1 OVER THE COURSE OF THE DEFENSE'S CLOSING, THAT MORPHED
10:19AM 2 INTO THE DEVICE BEING TESTED ON AN AIRCRAFT. THAT'S NOT WHAT
10:19AM 3 THE EVIDENCE SHOWS. LET'S JUST BE CLEAR ABOUT THAT.

10:19AM 4 THE DEVICE TOOK A RIDE ON AN AIRPLANE. AT NO POINT IS
10:19AM 5 THERE ANY EVIDENCE THAT IT WAS INSTALLED ON A HELICOPTER, USED
10:20AM 6 FOR TESTING ON A MEDEVAC HELICOPTER, OR ANYTHING LIKE WHAT THE
10:20AM 7 DEFENDANTS WERE TELLING INVESTORS WHAT WAS HAPPENING.

10:20AM 8 WHEN IT COMES TO CENTCOM OR CENTRAL COMMAND, THIS WOULD
10:20AM 9 HAVE BEEN THE COMPONENT OF THE MILITARY THAT COULD HAVE USED
10:20AM 10 THE DEVICE FOR TREATMENT OF SOLDIERS IN THE MIDDLE EAST WHERE
10:20AM 11 THERE WAS ACTIVE ENGAGEMENTS OCCURRING.

10:20AM 12 YOU KNOW, THOUGH, THAT WHAT WAS GOING TO HAPPEN HERE WAS A
10:20AM 13 LIMITED OBJECTIVE EXPERIMENT WHERE THE DEVICE WOULD BE
10:20AM 14 EVALUATED TO SEE IF POSSIBLY AT SOME POINT IN THE FUTURE IT
10:20AM 15 COULD BE USED TO TREAT SOLDIERS.

10:20AM 16 NOT ONLY DID THERANOS NEVER PASS THAT KIND OF EVALUATION,
10:20AM 17 THE EVALUATION NEVER EVEN HAPPENED. NO DEVICE WAS EVER SENT
10:20AM 18 OVERSEAS, AND THIS LIMITED OBJECTIVE EXPERIMENT NEVER GOT OFF
10:20AM 19 THE GROUND.

10:20AM 20 SO MULTIPLE STEPS AWAY FROM BEING AT THE POINT WHERE THE
10:20AM 21 DEFENDANTS WERE SAYING IT WAS.

10:21AM 22 IN CONNECTION WITH THAT ENGAGEMENT OR THAT CONTACT WITH
10:21AM 23 THE MILITARY, YOU SAW EVIDENCE THAT MR. BALWANI WAS PERSONALLY
10:21AM 24 INVOLVED, THAT HE WAS WORKING SPECIFICALLY ON I.T. ISSUES.
10:21AM 25 THAT TELLS YOU SOMETHING. IT TELLS YOU THAT HE WAS AWARE OF

10:21AM 1 WHERE THINGS STOOD WITH THESE MILITARY CONTRACTS. SO YOU
10:21AM 2 SHOULDN'T HAVE ANY DOUBT THAT MR. BALWANI KNEW WHEN HE WAS IN
10:21AM 3 ROOMS WITH INVESTORS AND THEY WERE BEING TOLD THAT THE
10:21AM 4 COMPANY'S DEVICE WAS BEING USED ACTIVELY BY THE MILITARY. HE
10:21AM 5 KNEW THAT WAS FALSE. HE WAS UNDER NO FALSE IMPRESSION THAT
10:21AM 6 THIS PROGRAM WAS FURTHER ALONG THAN IT ACTUALLY WAS.

10:21AM 7 NOW, IN ITS CLOSING THE DEFENSE ARGUED THAT THESE
10:21AM 8 MISREPRESENTATIONS ABOUT THE MILITARY SHOULD BE CHALKED UP TO
10:21AM 9 SOME KIND OF MISUNDERSTANDING, AND MR. COOPERSMITH COMPARED
10:22AM 10 THIS TO A GAME OF TELEPHONE. DO YOU REMEMBER THAT?

10:22AM 11 THIS IS NOTHING LIKE THAT. IN THE GAME OF TELEPHONE, I'M
10:22AM 12 SURE YOU KNOW, ONE PERSON WHISPERS SOMETHING TO THE NEXT PERSON
10:22AM 13 WHO WILL THEN WHISPER IT TO THE NEXT, AND THEN A FEW LAYERS
10:22AM 14 LATER, YOU CHECK AND SEE WHETHER THE ORIGINAL MESSAGE WAS
10:22AM 15 PRESERVED, AND WHAT YOU END UP LEARNING IS THAT WHEN
10:22AM 16 INFORMATION IS PASSED THROUGH MULTIPLE PEOPLE, WHEN YOU GET
10:22AM 17 SOMETHING THIRD OR FOURTH HAND, YOU SOMETIMES CAN'T RELY ON
10:22AM 18 BELIEVING THAT THAT'S WHAT THE ORIGINAL PERSON ACTUALLY SAID.

10:22AM 19 HERE WE HAVE THE OPPOSITE SITUATION. HERE WE HAVE
10:22AM 20 MULTIPLE PEOPLE WHO ALL HEARD THE SAME THING FROM THE SAME
10:22AM 21 SOURCE, THAT SOURCE BEING ELIZABETH HOLMES AND MR. BALWANI IN
10:22AM 22 MEETINGS THAT THEY HAD.

10:22AM 23 AND YOU'LL SEE HERE THAT AS EXAMPLES, THESE FOUR INVESTORS
10:22AM 24 ALL TESTIFIED ABOUT VERY SIMILAR THINGS THAT THEY HEARD FROM
10:22AM 25 THESE SAME DEFENDANTS.

1 SO INSTEAD OF BEING A SITUATION WHERE THE TRUTH GETS
2 DISTORTED BY PEOPLE ACTING IN GOOD FAITH BUT MAKING MISTAKES AS
3 INFORMATION IS PASSED ALONG, WE HAVE FOUR PEOPLE WHO ARE ALL
4 DELIBERATELY DECEIVED BY THE SAME PERSON AND BECAUSE THEY ALL
5 SAY CONSISTENTLY THE SAME THING, YOU CAN HAVE CONFIDENCE THAT
6 YOU'RE HEARING FROM THEM WHAT THEY HEARD FROM THE DEFENDANT.

7 ON OTHER TOPICS, YOU ALSO HEARD THAT THE COMPANY HAD NO
8 REVENUE FROM PHARMACEUTICAL COMPANIES AFTER 2011 DESPITE SOME
9 FRIENDLY EMAILS THAT PEOPLE AT THERANOS HAD WITH PEOPLE AT
10 THOSE PHARMACEUTICAL COMPANIES. NOTHING ACTUALLY DEVELOPED OF
11 THAT. AND YOU CAN CONFIRM THAT IN EXHIBIT 7753, WHICH ARE THE
12 THERANOS FINANCIAL RECORDS THAT SHOW A LACK OF ANY REVENUE FROM
13 PHARMA AFTER THE YEAR 2011.

14 SO THINK ABOUT THAT IN TERMS OF WHAT THE DEFENDANTS WERE
15 TELLING PEOPLE IN LATE 2013 ABOUT WHAT THEY WERE DOING WITH
16 PHARMA, WHAT WAS GOING TO HAPPEN WITH PHARMA, WHAT REVENUE THEY
17 WERE GOING TO GET. WHEN THEY WERE SAYING THOSE THINGS, THEY
18 KNEW THAT THE COMPANY HAD NOT GENERATED ANY REVENUE FROM THAT
19 KIND OF BUSINESS FOR THE LAST COUPLE OF YEARS.

20 YOU KNOW THAT THE DEPARTMENT OF DEFENSE GAVE THEM NO
21 REVENUE EXCEPT FOR SOME MINIMAL MONEY FROM THE BURN STUDY. AND
22 YOU KNOW THAT THE COMPANY HAD LIMITED REVENUE OVERALL AND WAS
23 IN DESPERATE NEED FOR CASH TO STAY AFLOAT IN 2013.

24 YOU ALSO KNOW THAT PFIZER AND SCHERING-PLOUGH DID NOT
25 ACTUALLY VALIDATE THE TECHNOLOGY AS THE DEFENDANTS CLAIM.

10:24AM 1 AGAIN, THINK HOW VALUABLE THAT INFORMATION WOULD HAVE BEEN
10:24AM 2 TO THE VICTIMS IN THIS CASE. THAT INFORMATION, IF GIVEN TO THE
10:24AM 3 INVESTOR VICTIMS, WOULD HAVE SAVED THEM MILLIONS, TENS OF
10:24AM 4 MILLIONS, SOMETIMES A HUNDRED MILLION DOLLARS. FOR PATIENTS,
10:24AM 5 THAT INFORMATION WOULD HAVE PROTECTED THEM FROM THE RISK OF
10:24AM 6 RELYING ON A COMPANY FOR THEIR BLOOD TESTING NEEDS THAT
10:24AM 7 COULDN'T GIVE THEM RELIABLE OR ACCURATE RESULTS.

10:25AM 8 SO AT THIS POINT YOU'VE HEARD FROM THOSE VICTIMS WHO WERE
10:25AM 9 DECEIVED. LET'S TALK ABOUT SOME DEFENSE ARGUMENTS THAT ARE
10:25AM 10 URGING YOU TO IGNORE THAT EVIDENCE AND WHY YOU SHOULDN'T.

10:25AM 11 FIRST, THE DEFENSE ARGUES THAT MR. BALWANI COULD NOT HAVE
10:25AM 12 INTENDED TO DEFRAUD ANYONE BECAUSE HE HIMSELF BET ON THERANOS.
10:25AM 13 YOU HEARD THAT HE GUARANTEED A LOAN TO THE COMPANY OF \$10 TO
10:25AM 14 \$12 MILLION, BUT PAY ATTENTION TO THE TIMING HERE. THIS
10:25AM 15 HAPPENED IN AUGUST OF 2009 AND APRIL OF 2010. SO THAT DECISION
10:25AM 16 ITSELF DOESN'T TELL YOU MUCH ABOUT HIS STATE OF MIND AT TIME
10:25AM 17 PERIODS LIKE 2013, 2014 WHEN HE, OF COURSE, KNEW MORE ABOUT
10:25AM 18 WHAT WAS HAPPENING AT THE COMPANY. EXCEPT THAT, OF COURSE, IT
10:25AM 19 GAVE HIM A MOTIVE TO DO WHATEVER HE COULD TO MAKE THE COMPANY
10:25AM 20 SUCCESSFUL BECAUSE HE ACTUALLY HAD SKIN IN THE GAME. HIS MONEY
10:26AM 21 WAS AT STAKE AT THAT POINT.

10:26AM 22 WHAT DO YOU THINK ABOUT THE FACT THAT MR. BALWANI
10:26AM 23 GUARANTEED THAT LOAN FOR THE COMPANY? BECAUSE IT IS HIM TAKING
10:26AM 24 ON SOME RISK. AND WHY WOULD HE TAKE ON RISK FOR THE COMPANY IF
10:26AM 25 HE DIDN'T BELIEVE THAT IT WOULD ULTIMATELY BE SUCCESSFUL?

10:26AM 1 WELL, I WOULD LIKE YOU TO THINK ABOUT THAT RISK IN THE
10:26AM 2 CONTEXT OF THE OTHER RISK THAT MR. BALWANI TOOK WHEN IT CAME TO
10:26AM 3 THERANOS, WHICH IS COMMITTING MULTIPLE CRIMES.

10:26AM 4 IF MR. BALWANI WAS WILLING TO PUT THAT ON THE LINE TO
10:26AM 5 SERVE THE COMPANY AND TO TRY TO MAKE IT SUCCESSFUL, THEN IT'S
10:26AM 6 MUCH LESS SURPRISING THAT HE WOULD BE WILLING TO PUT HIS CASH
10:26AM 7 ON THE LINE AS WELL.

10:26AM 8 AND REMEMBER THAT THE PLAN HERE WAS NOT TO GET CAUGHT.
10:26AM 9 THE PLAN HERE WAS NOT FOR THE COMPANY TO FAIL. THE PLAN WAS TO
10:26AM 10 GET AWAY WITH IT. THE PLAN WAS TO HAVE THE LIES NEVER BE
10:26AM 11 DISCOVERED, POSSIBLY TO MAKE THEM TRUE BEFORE ANYONE FOUND OUT
10:27AM 12 ABOUT THEM, FOR THE COMPANY TO BECOME GENUINELY SUCCESSFUL, TO
10:27AM 13 NEVER PAY BACK THAT LOAN, TO NEVER HAVE TO EXPLAIN THE FALSE
10:27AM 14 STATEMENTS THAT MR. BALWANI AND MS. HOLMES MADE TO THE VICTIMS.

10:27AM 15 AND THAT PLAN WAS INITIALLY SUCCESSFUL.

10:27AM 16 THAT BRINGS US TO MR. BALWANI'S INVESTMENT IN THERANOS,
10:27AM 17 WHICH YOU SHOULD VIEW SIMILARLY. THIS WAS IN 2010 AND 2011
10:27AM 18 WHEN HE INVESTED APPROXIMATELY \$4.5 OR \$4.6 MILLION.

10:27AM 19 FIRST, AS TO WHY HE BOUGHT STOCK INSTEAD OF KEEPING HIS
10:27AM 20 OPTIONS, YOU DON'T HAVE EVIDENCE EXPLAINING THAT. YOU DON'T
10:27AM 21 KNOW ABOUT WHAT ELSE WAS HAPPENING WITH MR. BALWANI'S FINANCES
10:27AM 22 AT THE TIME, WHAT ADVICE HE MIGHT HAVE GOTTEN AT THAT TIME
10:27AM 23 ABOUT THAT DECISION, WHAT REQUESTS WERE MADE, SO THERE'S NO
10:27AM 24 POINT IN SPECULATING ABOUT THAT.

10:27AM 25 AS FAR AS WHY HE WANTED TO OWN STOCK IN THERANOS, THAT'S

10:27AM 1 SIMPLER TO UNDERSTAND. PEOPLE BUY STOCK BECAUSE THEY BELIEVE
10:27AM 2 THE VALUE WAS GOING TO GO UP. THERE'S NO REASON TO THINK THAT
10:27AM 3 MR. BALWANI HAD ANY OTHER PLAN HERE.

10:28AM 4 AND YOU HEARD TESTIMONY ABOUT HOW MUCH THE VALUE OF
10:28AM 5 THERANOS STOCK WENT UP DURING THE RELEVANT TIME PERIOD IN THE
10:28AM 6 YEARS LEADING UP TO 2014.

10:28AM 7 AT THERANOS'S PEAK, MR. BALWANI'S INVESTMENT IN THE
10:28AM 8 COMPANY WOULD HAVE BEEN WORTH A VERY, VERY LARGE AMOUNT OF
10:28AM 9 MONEY INDEED.

10:28AM 10 IT'S IMPORTANT TO REMEMBER, THOUGH, THAT THE REASON THE
10:28AM 11 COMPANY'S VALUE WENT UP, THE REASON THE SHARE PRICE INCREASED
10:28AM 12 WAS BECAUSE OF THE FRAUD. IT WAS ONLY BECAUSE OF THE FALSE
10:28AM 13 IMPRESSION THAT PEOPLE HAD OF THE COMPANY, THE EXAGGERATED VIEW
10:28AM 14 THEY HAD OF ITS ACHIEVEMENTS, THAT THE STOCK ACHIEVED THOSE
10:28AM 15 HEIGHTS.

10:28AM 16 SO AGAIN, IT ALL COMES BACK TO MR. BALWANI'S INTENT
10:28AM 17 BECAUSE BY FULLING THOSE FALSE IMPRESSIONS, BY LYING TO PEOPLE
10:28AM 18 AND CREATING THOSE MISUNDERSTANDINGS AND INACCURATE VIEWS IN
10:28AM 19 THEIR MINDS, MR. BALWANI WAS ABLE TO INCREASE THE VALUE NOT
10:29AM 20 JUST OF THE COMPANY HE WORKED FOR, THE COMPANY THAT HIS
10:29AM 21 GIRLFRIEND FOUNDED, BUT ALSO INCREASE THE VALUE OF HIS SHARES
10:29AM 22 AS WELL.

10:29AM 23 OF COURSE, WE KNOW NOW THAT THE COMPANY'S SUCCESS DURING
10:29AM 24 THAT TIME PERIOD WAS AN ILLUSION. IT WAS BASED ON A FOUNDATION
10:29AM 25 OF THE FRAUD THAT IS ALLEGED IN THIS CASE, AND THAT FOUNDATION

1 WAS ALREADY CRUMBLING BY THE TIME MR. BALWANI LEFT THE COMPANY
2 IN 2016.

3 WE SHOULD TALK ABOUT ANOTHER DEFENSE ARGUMENT WHICH IS
4 THAT MR. BALWANI APPEARS NOT TO HAVE MADE ANY EFFORT TO ENRICH
5 HIMSELF IN THE SHORT TERM, HE DIDN'T SELL HIS STOCK, HE WAS
6 SATISFIED WITH A RELATIVELY MODEST SALARY. SO A FEW THINGS TO
7 KEEP IN MIND THERE.

8 FIRST OF ALL, WHEN THE COURT INSTRUCTS YOU ON THE LAW, YOU
9 WILL HEAR ABOUT WHETHER THE GOVERNMENT NEEDS TO PROVE THAT A
10 WIRE FRAUD SCHEME WAS SUCCESSFUL. AND IT'S IMPORTANT TO NOTE
11 THAT THAT IS NOT A REQUIREMENT. A WIRE FRAUD SCHEME DOES NOT
12 HAVE TO BE SUCCESSFUL TO RESULT IN A CONVICTION.

13 AND YOU SEE HERE SPECIFICALLY, YOU WILL BE TOLD THAT IT'S
14 NOT NECESSARY THAT MR. BALWANI MADE A PROFIT OR THAT ANYONE
15 SUFFERED A LOSS.

16 SO THE FACT THAT MR. BALWANI MAY NOT HAVE TAKEN AWAY A
17 STACK OF CASH FROM THESE SCHEMES TO DEFRAUD IS NO REASON NOT TO
18 CONVICT ACCORDING TO THE LAW THAT YOU'LL BE INSTRUCTED ON.

19 WHEN IT COMES TO MR. BALWANI'S SALARY, KEEP IN MIND THAT
20 YOU KNOW THAT HE HAD THE FINANCIAL RESOURCES TO GUARANTEE THAT
21 SIGNIFICANT LOAN AND INVEST MILLIONS OF DOLLARS IN THE COMPANY.

22 YOU CAN INFER FROM THAT, THAT IT WAS NO BIG SACRIFICE FOR
23 HIM TO MAKE A HUNDRED THOUSAND DOLLARS A YEAR AS OPPOSED TO TWO
24 OR THREE.

25 AND WHEN IT COMES TO NOT SELLING THERANOS STOCK, REMEMBER

10:30AM 1 MR. EISENMAN'S TESTIMONY? REMEMBER HIS TESTIMONY ABOUT HOW
10:30AM 2 DIFFICULT IT WAS FOR HIM WHEN HE WAS TRYING TO SELL THE STOCK,
10:31AM 3 AND HOW, AS HE TOLD YOU, NO ACTUAL OFFERS MATERIALIZED.

10:31AM 4 YOU ALSO KNOW FROM THE INVESTOR RIGHTS AGREEMENT, THAT'S
10:31AM 5 EXHIBIT 3530, THAT THERE WAS NO PUBLIC MARKET FOR THERANOS
10:31AM 6 STOCK. SO IT'S NOT CLEAR THAT MR. BALWANI ACTUALLY HAD THE
10:31AM 7 CHANCE TO SELL HIS STOCK. YOU SHOULDN'T PLACE A LOT OF WEIGHT
10:31AM 8 ON THE FACT THAT HE DIDN'T.

10:31AM 9 SO, AGAIN, MR. BALWANI'S PLAN HERE WAS NOT A SHORT-TERM
10:31AM 10 PLAN. THERE WAS NO ALLEGATION HERE THAT THIS WAS A GET RICH
10:31AM 11 SCHEME. MR. BALWANI WAS IN IT FOR THE LONG HAUL. HIS GOAL MAY
10:31AM 12 NOT HAVE BEEN FOR HIM TO CASH OUT EARLY. THE EVIDENCE SHOWS
10:31AM 13 THAT HE SET HIS SIGHTS HIGHER FROM THAT, AND WE ACTUALLY KNOW
10:31AM 14 THAT FROM HIS OWN WORDS.

10:31AM 15 THIS IS A TEXT EXCHANGE BETWEEN MR. BALWANI AND MS. HOLMES
10:31AM 16 DURING NOVEMBER OF 2013. AND AFTER EXPRESSING SOME AFFECTION
10:31AM 17 FOR EACH OTHER, KNOW WHAT MR. BALWANI SAYS, THE SECOND TO THE
10:31AM 18 BOTTOM THERE. HE SAYS, "THEN LET'S BUILD THE TRUE AMERICAN
10:32AM 19 EMPIRE. A MONOPOLY. OUR OBLIGATION TO U.S.A."

10:32AM 20 MS. HOLMES AGREES, "THAT'S WHAT WE'RE DOING."

10:32AM 21 SO THIS IS WHAT THE DEFENDANT WANTED. HE DIDN'T WANT TO
10:32AM 22 EARN A FEW MILLION DOLLARS AND THEN RUN AWAY. HE WANTED
10:32AM 23 THERANOS TO BE A MONOPOLY, HE WANTED TO BUILD AN EMPIRE WITH
10:32AM 24 MS. HOLMES, AND IN SERVICE OF THAT GOAL, HE COMMITTED MULTIPLE
10:32AM 25 FRAUDS. AND THAT EXPLAINS WHY HE DIDN'T MAKE AN EFFORT TO CASH

1 OUT SOON. THIS WAS A LONG TERM PLAN.

2 AGAIN, IT WAS SUCCESSFUL FOR YEARS UNTIL IT WASN'T.

3 DURING THE TIME THAT MR. BALWANI WORKED AT THERANOS, YOU
4 SAW EVIDENCE THAT HE PUT EFFORT INTO ADDRESSING PROBLEMS AT THE
5 COMPANY. SO HOW SHOULD YOU THINK ABOUT THAT?

6 WELL, THE GOVERNMENT IS NOT ASKING YOU TO BELIEVE THAT
7 MR. BALWANI DIDN'T WANT THE THERANOS TESTS TO WORK. THAT'S
8 IMPORTANT TO UNDERSTAND.

9 HE AND MS. HOLMES WANTED THE TESTS TO WORK, AND MANY
10 PEOPLE AT THE COMPANY TRIED TO MAKE THAT HAPPEN. AND OF COURSE
11 HE DID.

12 MR. BALWANI WOULD HAVE PREFERRED TO LIVE IN A WORLD WHERE
13 HE DIDN'T HAVE TO LIE ABOUT THE THINGS THAT HE WAS LYING ABOUT.
14 HE WOULD HAVE PREFERRED TO LIVE IN A WORLD WHERE THERANOS
15 TECHNOLOGY COULD DO WHAT HE SAID IT COULD DO. THAT WORLD WOULD
16 HAVE BEEN BETTER.

17 IF THERANOS HAD ACTUALLY HAD THOSE CONTRACTS WITH THE
18 MILITARY, AND THE MILITARY WAS USING THE DEVICES THE WAY HE
19 SAID, THEN HE WOULDN'T HAVE HAD TO LIE ABOUT THAT.

20 IF THE COMPANY HAD BEEN GENERATING THE SIGNIFICANT
21 REVENUES THAT HE HAD CLAIMED, IF THE COMPANY WAS REALLY ON
22 TRACK TO GENERATE EVEN MORE, THAT WOULD HAVE BEEN A BETTER
23 WORLD FOR HIM.

24 SO OF COURSE ACTUAL SUCCESS WOULD HAVE BEEN BETTER THAN
25 FALSE SUCCESS, AND MR. BALWANI WAS PUTTING EFFORT INTO TRYING

1 TO ACHIEVE THAT ACTUAL SUCCESS. AND OF COURSE THAT APPLIES TO
2 TEST ACCURACY, TOO.

3 THE EVIDENCE SHOWS THAT HE PUT PRESSURE ON OTHERS AT THE
4 COMPANY TO FIX PROBLEMS WITH THE TEST. BUT WHAT MATTERS FOR
5 YOUR QUESTION, FOR THE DECISION THAT YOU NEED TO MAKE, IS NOT
6 WHETHER MR. BALWANI WISHED THE TESTS WOULD WORK.

7 WHAT MATTERS IS WHETHER HE KNEW THE TESTS WEREN'T WORKING
8 AND WHAT HE DID BASED ON THAT KNOWLEDGE.

9 AND THE EVIDENCE SHOWS YOU THAT HE WAS AWARE OF THE
10 PROBLEMS. SO THAT CHOICE WASN'T ACTUALLY AVAILABLE TO HIM. IT
11 WASN'T A REALISTIC CHOICE FOR HIM TO OFFER RELIABLE TESTING
12 USING THE THERANOS TECHNOLOGY.

13 THE CHOICE WAS EITHER TO STOP AND CEASE USING THE
14 UNRELIABLE THERANOS TECHNOLOGY OR TO MOVE FORWARD AND DEFRAUD
15 PATIENTS. THOSE WERE THE ONLY TWO CHOICES AVAILABLE TO HIM.
16 YOU KNOW WHAT CHOICE HE MADE. HE MADE THE WRONG CHOICE. HE
17 MADE THE FRAUDULENT CHOICE CONSISTENTLY.

18 THERE'S BEEN SOME DISCUSSION BY THE DEFENSE ABOUT THIS
19 IDEA THAT A TECHNOLOGY COMPANY WILL ALWAYS BE DEVELOPING ITS
20 PRODUCT. AND OF COURSE THAT'S TRUE. AND OF COURSE NO ONE
21 WOULD TESTIFY OR HAS TESTIFIED THAT IT'S WRONG FOR A TECH
22 COMPANY TO CONTINUE MAKING IMPROVEMENTS TO ITS DEVICE.

23 AND THE DEFENSE IS FOND OF USING THE IPHONE AS AN EXAMPLE.
24 EVERY VERSION OF THE IPHONE IS SUPPOSED TO BE BETTER THAN THE
25 ONE BEFORE IT, AND THAT'S OKAY, THERE'S NO FRAUD THERE.

10:35AM 1 WHEN YOU GET INTO TROUBLE, THOUGH, AS WE SEE HERE, IS WHEN
10:35AM 2 YOU LIE ABOUT WHAT YOUR CURRENT GENERATION OF TECHNOLOGY CAN
10:35AM 3 DO.

10:35AM 4 SO IMAGINE AN IPHONE THAT WAS HELD OUT AS BEING A
10:35AM 5 REPLACEMENT FOR A TYPICAL SMARTPHONE, BUT IT TURNS OUT THAT IT
10:35AM 6 COULDN'T DO SIMPLE THINGS LIKE TAKE A PHOTO OR PLACE A CALL
10:35AM 7 OUTSIDE OF YOUR AREA CODE.

10:35AM 8 THAT WOULD LEAD TO A SITUATION WHERE YOU MIGHT CONCLUDE
10:35AM 9 THAT PEOPLE BUYING THAT PHONE HAVE BEEN DECEIVED. AND THE FACT
10:35AM 10 THAT THE NEXT VERSION OF THE PHONE MIGHT BE CAPABLE OF DOING
10:35AM 11 THOSE THINGS DOES NOT ERASE THAT FRAUD. IT DOESN'T GET RID OF
10:36AM 12 THAT DECEPTION. AND THAT WAS THE CASE HERE.

10:36AM 13 THE THERANOS EDISON DEVICE YOU KNOW COULDN'T DO BASIC
10:36AM 14 THINGS LIKE A COMPLETE BLOOD COUNT, OR DNA TESTING, OR ANY
10:36AM 15 GENERAL CHEMISTRY LIKE A SIMPLE ELECTROLYTE TEST. INITIALLY
10:36AM 16 THREE WERE NEEDED TO WORK TOGETHER TO RETURN ONE RESULT. SO I
10:36AM 17 THINK THE IPHONE EXAMPLE BREAKS DOWN IN THAT WAY.

10:36AM 18 WHEN WE'RE TALKING ABOUT WORK AT THERANOS, WE'RE ALSO
10:36AM 19 TALKING ABOUT HOW INVESTOR MONEY WAS SPENT. AND A FEW TIMES
10:36AM 20 THE DEFENSE HAS EMPHASIZED FOR YOU THAT THERE'S NO EVIDENCE IN
10:36AM 21 THE CASE THAT INVESTOR MONEY WAS MISSPENT, THAT IT WAS SPENT ON
10:36AM 22 ANYTHING OTHER THAN THE WORK OF THERANOS, THE TECHNOLOGY
10:36AM 23 COMPANY. THAT'S TRUE, BUT IT MISSES THE POINT.

10:36AM 24 AS MR. SCHENK TOLD YOU, THIS IS NOT A CASE WHERE
10:36AM 25 MR. BALWANI IS ACCUSED OF MISAPPROPRIATING INVESTOR MONEY.

10:36AM 1 THIS ISN'T AN EMBEZZLEMENT CASE.

10:36AM 2 TO PUT IT SIMPLY, THIS CASE IS NOT ABOUT HOW MR. BALWANI
10:37AM 3 USED INVESTOR MONEY. THIS CASE IS ABOUT HOW HE GOT IT IN THE
10:37AM 4 FIRST PLACE. AND THE CRIME WAS COMPLETE BEFORE THE INVESTORS
10:37AM 5 EVEN -- BEFORE ANY OF THAT MONEY WAS SPENT BECAUSE THE CRIME
10:37AM 6 RELATES TO THE DECEPTION THAT THE DEFENDANTS ENGAGED IN IN
10:37AM 7 ORDER TO GET THAT MONEY IN THE FIRST PLACE.

10:37AM 8 THE DEFENSE ALSO MENTIONED GOOD FAITH, AND IT'S IMPORTANT
10:37AM 9 TO BE CLEAR ABOUT WHAT WE'RE TALKING ABOUT WHEN WE'RE TALKING
10:37AM 10 ABOUT GOOD FAITH IN THIS CASE.

10:37AM 11 JURY INSTRUCTION NUMBER 22 IS GOING TO TELL YOU THAT THE
10:37AM 12 KIND OF GOOD FAITH THAT MATTERS HERE, THE KIND OF GOOD FAITH
10:37AM 13 THAT MIGHT PREVENT A CONVICTION ON THE BASIS OF A CERTAIN KIND
10:37AM 14 OF MISREPRESENTATION WOULD NEED TO BE A GOOD FAITH BELIEF IN
10:37AM 15 THE TRUTH OF THE SPECIFIC MISREPRESENTATIONS ALLEGED.

10:37AM 16 SO WHAT DOES THAT MEAN? WELL, WHAT THIS DOESN'T MEAN,
10:37AM 17 WHAT THIS ISN'T REFERRING TO IS A GENERAL GOOD FAITH BELIEF IN
10:38AM 18 THERANOS. IT DOESN'T REFER TO A GENERAL HOPE THAT THE COMPANY
10:38AM 19 IS GOING TO DO WELL, A GENERAL BELIEF THAT EVERYTHING IS GOING
10:38AM 20 TO BE OKAY, IT DOESN'T REFER TO A GENERAL BELIEF OR PLAN THAT
10:38AM 21 INVESTORS ARE ULTIMATELY GOING TO MAKE MONEY. THAT HAS NOTHING
10:38AM 22 TO DO WITH IT.

10:38AM 23 AND IT HAS NOTHING TO DO WITH GOOD FAITH WORK AT THE
10:38AM 24 COMPANY TO TRY TO MAKE THINGS BETTER. THAT KIND OF GOOD FAITH
10:38AM 25 DOESN'T REGISTER WHEN IT COMES TO YOUR ANALYSIS HERE.

10:38AM 1 WHAT MATTERS IS THAT DID MR. BALWANI ACTUALLY BELIEVE THAT
10:38AM 2 SOME OF THE FALSE STATEMENTS WERE TRUE? THERE'S NO EVIDENCE TO
10:38AM 3 SUPPORT THAT. IN FACT, THE EVIDENCE SHOWS THE OPPOSITE.

10:38AM 4 WHEN INVESTORS AND PATIENTS WERE TOLD FALSE THINGS ABOUT
10:38AM 5 THE COMPANY, MR. BALWANI KNEW THEY WERE FALSE.

10:38AM 6 THE DEFENSE ALSO TALKS ABOUT THE EXTENT TO WHICH OTHER
10:38AM 7 PEOPLE'S VIEWS MIGHT HAVE INFLUENCED MR. BALWANI'S. SO LET'S
10:39AM 8 TALK ABOUT THAT.

10:39AM 9 THEY TALK ABOUT FAVORABLE REPORTS ON THE COMPANY'S
10:39AM 10 TECHNOLOGY THAT CAME FROM IT OUTSIDE OF THE COMPANY.

10:39AM 11 THE DEFENSE HAS EMPHASIZED A FEW SITUATIONS WHERE PEOPLE
10:39AM 12 OUTSIDE OF THE COMPANY REPORTEDLY LOOKED AT THE COMPANY'S
10:39AM 13 TECHNOLOGY AND SAID FAVORABLE THINGS.

10:39AM 14 THE KEY HERE IS TO BE AWARE OF WHAT YOU DON'T KNOW ABOUT
10:39AM 15 THE INFORMATION RELIED UPON BY THE PEOPLE IN THOSE SITUATIONS.

10:39AM 16 YOU HEARD FROM WITNESSES AT PFIZER AND SCHERING-PLOUGH
10:39AM 17 ABOUT HOW THEY DID NOT COMPREHENSIVELY VALIDATE THE TECHNOLOGY
10:39AM 18 AND HOW, IN FACT, THEY DID NOT HAVE A FAVORABLE VIEW OF THE
10:39AM 19 TECHNOLOGY IN SOME RESPECTS.

10:39AM 20 WHEN IT COMES TO JOHNS HOPKINS, WHICH MR. COOPERSMITH
10:39AM 21 DISCUSSED, THE EXHIBIT ITSELF TELLS YOU HOW LIMITED THIS REVIEW
10:39AM 22 WAS AND GIVES YOU A REASON NOT TO PUT TOO MUCH WEIGHT ON IT.

10:40AM 23 SO YOU'LL NOTE THAT IN APRIL OF 2010 THIS REFERENCES A
10:40AM 24 ONE-DAY MEETING ON APRIL 27TH AND IT SAYS, "THE HOPKINS TEAM
10:40AM 25 REVIEWED PROPRIETARY DATA ON TEST PERFORMANCE FOR ROUTINE TESTS

10:40AM 1 AND SPECIAL TESTS."

10:40AM 2 IT SAYS, "THERANOS PRESENTED ADDITIONAL DATA ON
10:40AM 3 TECHNOLOGY, TEST PERFORMANCE, AND BUSINESS VISION, AND
10:40AM 4 DEMONSTRATED TECHNOLOGY ON SITE."

10:40AM 5 SO WHAT IS THIS SAYING? THIS IS SAYING THAT JOHNS HOPKINS
10:40AM 6 GOT DATA THAT WAS SELECTED AND PROVIDED BY THERANOS ITSELF.
10:40AM 7 YOU'LL NOTE THAT THIS DOCUMENT IDENTIFIES THE ONLY THERANOS
10:40AM 8 ATTENDEES AT THAT MEETING AS ELIZABETH HOLMES AND
10:40AM 9 SUNNY BALWANI. THERE ARE NO SCIENTISTS LISTED.

10:40AM 10 AND JOHNS HOPKINS WAS FORCED TO DETERMINE WHAT IT COULD
10:40AM 11 BASED ON THE INFORMATION AVAILABLE, WHICH WAS CONTROLLED AND
10:40AM 12 SUPPLIED BY THERANOS.

10:40AM 13 MR. COOPERSMITH: OBJECTION, YOUR HONOR. THERE'S NO
10:40AM 14 EVIDENCE OF ANY PROBLEM WITH THE DATA THAT WAS SUPPLIED. IT'S
10:41AM 15 NOT IN THE RECORD.

10:41AM 16 THE COURT: THIS IS COMMENT ON THE EVIDENCE, AND
10:41AM 17 YOUR OBJECTION IS NOTED. IT'S OVERRULED.

10:41AM 18 THIS IS COMMENT ON THE EVIDENCE.

10:41AM 19 AS YOU'VE HEARD, LADIES AND GENTLEMEN, I THINK I'VE
10:41AM 20 MENTIONED BEFORE, WHAT THE LAWYERS SAY IN THEIR ARGUMENTS IS
10:41AM 21 NOT EVIDENCE. IT'S NOT EVIDENCE.

10:41AM 22 YOU CAN CONTINUE, MR. BOSTIC.

10:41AM 23 MR. BOSTIC: MEMBERS OF THE JURY, WHAT I WOULD LIKE
10:41AM 24 YOU TO THINK ABOUT HERE AND WHAT I WOULD LIKE TO YOU RELY UPON,
10:41AM 25 AGAIN, IS NOT WHAT I'M SAYING, BUT THE EVIDENCE THAT IS ALREADY

10:41AM 1 IN THE RECORD ABOUT WHETHER THIS DEFENDANT AND HIS PARTNER,
10:41AM 2 MS. HOLMES, WERE RELIABLE SOURCES OF INFORMATION ABOUT THERANOS
10:41AM 3 OR NOT.

10:41AM 4 I THINK YOU HAVE A LOT OF EVIDENCE TO MAKE THAT
10:41AM 5 DETERMINATION. AND I THINK IT'S IMPORTANT TO NOTE THAT
10:41AM 6 JOHNS HOPKINS'S DETERMINATION, THEIR OPINION, WOULD HAVE BEEN
10:41AM 7 SHAPED BY INFORMATION OF THAT SOURCE.

10:42AM 8 ONE OTHER THING TO NOTE ABOUT THIS REPORT IS ITS TIMING.
10:42AM 9 SO THIS WAS IN APRIL OF 2010. OBVIOUSLY THAT'S LONG BEFORE THE
10:42AM 10 2013 AND 2014 TIME PERIOD WHEN MR. BALWANI AND MS. HOLMES WERE
10:42AM 11 MAKING FALSE REPRESENTATIONS TO INVESTORS, WHEN MR. BALWANI WAS
10:42AM 12 OVERSEEING A DISASTROUS ROLLOUT OF FLAWED PATIENT TESTING
10:42AM 13 THROUGH WALGREENS. SO YOU SHOULD WONDER HOW MUCH WEIGHT YOU
10:42AM 14 SHOULD PLACE ON THIS IN TERMS OF MR. BALWANI'S MENTAL STATE AND
10:42AM 15 KNOWLEDGE AND INTENT DURING THOSE 2013 AND 2014 YEARS.

10:42AM 16 IN 2013 AND 2014, HE KNEW A LOT MORE ABOUT
10:42AM 17 THERANOS'S TECHNOLOGY AND A LOT MORE NEGATIVE INFORMATION THAN
10:42AM 18 HE WOULD HAVE KNOWN IN 2010.

10:42AM 19 THAT'S NOT TO SAY INSTANCES LIKE THIS WERE NOT INFORMATIVE
10:42AM 20 TO MR. BALWANI, THOUGH. ALTHOUGH THIS MIGHT NOT HAVE BEEN
10:43AM 21 CONCLUSIVE PROOF THAT THE THERANOS TECHNOLOGY WORKED,
10:43AM 22 ESPECIALLY WHEN WEIGHED AGAINST ALL OF THE NEGATIVE INFORMATION
10:43AM 23 THAT HE WAS GETTING FROM SCIENTISTS AT HIS OWN COMPANY WHO
10:43AM 24 ACTUALLY DID WORK WITH THE TECHNOLOGY. THIS DID TELL HIM
10:43AM 25 SOMETHING. THIS WOULD HAVE TOLD MR. BALWANI THAT PEOPLE

10:43AM 1 OUTSIDE OF THE COMPANY COULD BE CONVINCED THAT THE TECHNOLOGY
10:43AM 2 WORKED. IT WOULD HAVE TOLD HIM THAT AT A GLANCE THE THERANOS
10:43AM 3 TECHNOLOGY COULD BE IMPRESSIVE. AND HE BEGAN TO LEARN THAT FOR
10:43AM 4 SOME PEOPLE, ALL IT TOOK WAS A GLANCE AND IN SOME CASES SOME
10:43AM 5 DECEPTIVE STATEMENTS BY HIM AND HIS PARTNER TO SELL THEM ON THE
10:43AM 6 COMPANY AND ITS TECH.

10:43AM 7 LET'S TALK NEXT ABOUT SCIENTISTS AT THE COMPANY.

10:43AM 8 THE DEFENSE'S ARGUMENTS WHEN IT COMES TO SCIENTISTS BOIL
10:43AM 9 DOWN TO EITHER BLAMING OTHER PEOPLE FOR THE PROBLEMS AT THE
10:43AM 10 COMPANY OR RELYING ON POSITIVE THINGS THAT OTHERS AT THE
10:44AM 11 COMPANY SAID ABOUT THE COMPANY'S TECHNOLOGY.

10:44AM 12 YOU'LL RECALL THAT A FEW TIMES THE DEFENSE HAS POINTED OUT
10:44AM 13 THAT THE LABORATORY DIRECTOR IS AN IMPORTANT ROLE IN A LAB;
10:44AM 14 THAT THE LAB DIRECTOR IS RESPONSIBLE FOR THE ACCURACY AND
10:44AM 15 RELIABILITY OF TESTING THAT HAPPENS WITHIN A LAB. AND
10:44AM 16 MR. COOPERSMITH SHOWED YOU AN ATTESTATION THAT DR. ROSENDORFF
10:44AM 17 SIGNED WHEN HE BECAME A LAB DIRECTOR FOR THERANOS ACKNOWLEDGING
10:44AM 18 THAT ROLE.

10:44AM 19 WHAT THAT MEANS IS THAT DR. ROSENDORFF AS LAB DIRECTOR WAS
10:44AM 20 AGREEING TO TAKE ON THAT RESPONSIBILITY. HE WAS AGREEING TO DO
10:44AM 21 WHAT WAS NECESSARY TO ENSURE THE ACCURACY AND RELIABILITY OF
10:44AM 22 THE ROLE.

10:44AM 23 WHAT THAT ATTESTATION DOES NOT SAY IS THAT AS LAB
10:44AM 24 DIRECTOR, DR. ROSENDORFF WAS AGREEING TO BE STYMIED IN HIS WORK
10:44AM 25 BY THE PRESIDENT OF THE COMPANY, MR. BALWANI. THAT ATTESTATION

10:44AM 1 DOESN'T SAY I AGREE THAT WHEN THE PRESIDENT OF THE COMPANY
10:44AM 2 KEEPS ME FROM DOING WHAT IS NECESSARY TO ENSURE ACCURATE
10:45AM 3 TESTING, YOU CAN STILL BLAME ME AFTER THE FACT WHEN THINGS GO
10:45AM 4 WRONG. YOU KNOW THAT'S NOT THE SPIRIT OF THAT LANGUAGE.

10:45AM 5 BEYOND THAT, THE DEFENSE MADE ARGUMENTS ABOUT HOW CERTAIN
10:45AM 6 SCIENTISTS AT THE COMPANY SAID POSITIVE THINGS ABOUT THERANOS
10:45AM 7 TECHNOLOGY AT VARIOUS POINTS OVER THE YEARS. AND THEY SHOWED
10:45AM 8 YOU, FOR EXAMPLE, AN EMAIL FROM IAN GIBBONS WHO YOU DIDN'T HEAR
10:45AM 9 FROM, FROM 2010. THAT EMAIL WAS SHOWN TO YOU WITHOUT MUCH
10:45AM 10 CONTEXT AND OBVIOUSLY YEARS BEFORE THIS MORE IMPORTANT 2013 AND
10:45AM 11 2014 TIME PERIOD.

10:45AM 12 YOU SHOULD DOUBT WHETHER MR. BALWANI WOULD HAVE STILL BEEN
10:45AM 13 RELYING ON THAT MESSAGE FROM YEARS AGO IN THE FACE OF ALL OF
10:45AM 14 THE CONCRETE NEGATIVE INFORMATION HE WAS GETTING FROM PEOPLE
10:45AM 15 WHO WERE OPERATING HIS TECHNOLOGY IN THE YEARS WHEN THE COMPANY
10:45AM 16 WENT LIVE.

10:45AM 17 YOU SHOULD ALSO THINK ABOUT HOW MR. BALWANI REACTED WHEN
10:46AM 18 HE GOT THAT NEGATIVE INFORMATION FROM PEOPLE. WAS HE RECEPTIVE
10:46AM 19 TO BAD NEWS ABOUT THERANOS TECH? DID HE THANK PEOPLE FOR
10:46AM 20 BRINGING THOSE ISSUES TO HIS ATTENTION, OR DID HE RESPOND BY
10:46AM 21 EITHER IGNORING THEM OR IN SOME CASES WITH OPEN HOSTILITY? YOU
10:46AM 22 KNOW IT WAS THE LATTER.

10:46AM 23 SO DID MR. BALWANI RELY ON THERANOS SCIENTISTS OR NOT?
10:46AM 24 IT'S A COMPLICATED QUESTION BECAUSE WHAT THE EVIDENCE ACTUALLY
10:46AM 25 SHOWS IS THAT HE LISTENED SELECTIVELY. HE DECIDED WHAT TO PAY

10:46AM 1 ATTENTION TO AND WHAT NOT TO, AND HE DECIDED TO PAY ATTENTION
10:46AM 2 TO THE THINGS THAT HE WANTED TO HEAR, IGNORING OR DISMISSING
10:46AM 3 THE THINGS THAT HE DIDN'T WANT TO.

10:46AM 4 SO OBVIOUSLY HIS ACTIONS SPEAK LOUDLY ON THAT TOPIC.

10:46AM 5 HOW ABOUT HIS WORDS THOUGH? DID MR. BALWANI HAVE COMPLETE
10:46AM 6 FAITH IN THERANOS'S SCIENTISTS LIKE DANIEL YOUNG, FOR EXAMPLE?

10:47AM 7 WELL, WHAT DOES HE SAY? IN AUGUST OF 2014, AGAIN, WELL
10:47AM 8 AFTER THE COMPANY HAS LAUNCHED, WHEN THE COMPANY IS HANDLING
10:47AM 9 PATIENT TESTING, DR. YOUNG EMAILS MR. BALWANI INDIVIDUALLY TO
10:47AM 10 TALK ABOUT SOME CONCERNS THAT HE HAD ABOUT THE PT INR TEST.
10:47AM 11 AND MR. BALWANI FORWARDS THAT MESSAGE TO MS. HOLMES, THIS IS
10:47AM 12 AUGUST OF 2014, AND HIS REMARK THERE IS "ALWAYS ANOTHER STUDY
10:47AM 13 AFTER THE FACT."

10:47AM 14 AND WE SHOWED THIS EMAIL TO DR. ROSENDORFF, AND
10:47AM 15 DR. ROSENDORFF TOLD YOU ABOUT HOW THIS WAS A PATTERN AT
10:47AM 16 THERANOS, WHERE PROBLEMS WOULD COME UP, SOMEONE LIKE DR. YOUNG
10:47AM 17 WOULD PUT A STUDY TOGETHER TO TRY TO ADDRESS IT. AT FIRST IT
10:47AM 18 MIGHT SEEM LIKE THE PROBLEM HAD BEEN SOLVED, BUT THEN PROBLEMS
10:47AM 19 WOULD RESURFACE AGAIN AND AGAIN AND AGAIN.

10:47AM 20 MR. BALWANI SAW THAT PATTERN TOO. THIS IS HIM REMARKING
10:47AM 21 ON IT, LAMENTING THAT PATTERN TO MS. HOLMES, HIS PARTNER,
10:48AM 22 "ALWAYS ANOTHER STUDY AFTER THE FACT."

10:48AM 23 DID THIS SOUND LIKE A COO WHO BELIEVES THAT EVERYTHING IS
10:48AM 24 ON TRACK WITH THE TECHNOLOGY AT HIS COMPANY? DOES THIS SOUND
10:48AM 25 LIKE SOMEBODY WHO BELIEVES THAT THE ACCURACY OF THE TESTING IS

10:48AM 1 IN GOOD HANDS WITH SOMEONE LIKE DR. YOUNG?

10:48AM 2 NO. THIS IS EXPRESSING FRUSTRATION WITH THAT TREND.

10:48AM 3 AND THIS ISN'T UNIQUE. IN FRONT OF YOU HAS BEEN A LOT OF
10:48AM 4 EVIDENCE OF MR. BALWANI'S DISPLEASURE OF THINGS AT THE COMPANY
10:48AM 5 AND HIS AWARENESS OF THE PROBLEMS. THE TEXT MESSAGES BETWEEN
10:48AM 6 HIM AND MS. HOLMES ARE IN EXHIBIT 5378H, AND THOSE ARE REplete
10:48AM 7 WITH EXAMPLES OF MR. BALWANI EXPRESSING FRUSTRATION AND
10:48AM 8 UNHAPPINESS WITH THE WAY THINGS ARE GOING. SO YOU SHOULD NOT
10:48AM 9 BELIEVE FOR A SECOND THAT HE THOUGHT EVERYTHING WAS OKAY.

10:48AM 10 THAT SAME IDEA APPLIES TO CUSTOMER FEEDBACK AS WELL. THE
10:48AM 11 DEFENSE HAS SUGGESTED THAT BECAUSE CUSTOMERS GENERALLY HAD
10:49AM 12 FAVORABLE IMPRESSIONS OF THEIR EXPERIENCE WITH THERANOS,
10:49AM 13 MR. BALWANI MUST HAVE THOUGHT EVERYTHING WAS FINE.

10:49AM 14 BUT YOU KNOW AND HE KNOWS THAT THOSE RATINGS HAD VERY
10:49AM 15 LITTLE, IF ANYTHING, TO DO WITH THE ACCURACY AND RELIABILITY OF
10:49AM 16 THE TESTS. THE FACT THAT SOMEONE HAS A GOOD EXPERIENCE GETTING
10:49AM 17 THEIR BLOOD DRAWN HAS NOTHING TO DO WITH WHETHER THE RESULTS
10:49AM 18 THAT THEY'RE GETTING BACK ARE CORRECT OR NOT. AND THAT'S A
10:49AM 19 CASE OF PATIENTS NOT KNOWING WHAT MR. BALWANI KNEW, NOT KNOWING
10:49AM 20 ABOUT THE PROBLEMS IN THE LAB.

10:49AM 21 AND YOU CAN THINK ABOUT HOW A RESTAURANT WITH A TERRIBLE
10:49AM 22 HEALTH SCORE RATING FROM THE HEALTH INSPECTOR MIGHT STILL HAVE
10:49AM 23 A HIGH RATING ON YELP IF THE CUSTOMERS DON'T KNOW ABOUT ALL OF
10:49AM 24 THE PROBLEMS IN THE KITCHEN. THAT WAS THE CASE HERE.

10:49AM 25 THE PEOPLE GOING TO WALGREENS FOR BLOOD TESTING, THEY

10:49AM 1 DIDN'T HAVE THE INFORMATION THAT MR. BALWANI HAD. THEY DIDN'T
10:49AM 2 KNOW THAT THE COMPANY HAD SERIOUS QUALITY CONTROL PROBLEMS,
10:49AM 3 RELIABILITY ISSUES, THAT THEY WERE REGULARLY GETTING INACCURATE
10:50AM 4 RESULTS ON THEIR TECHNOLOGY AND GETTING COMPLAINTS FROM DOCTORS
10:50AM 5 AND PATIENTS.

10:50AM 6 YOU SHOULD ALSO BE SUSPICIOUS OF ANY CLAIM THAT
10:50AM 7 MR. BALWANI WAS RELYING ON ADVICE FROM OTHERS BECAUSE YOU KNOW
10:50AM 8 THAT HE IGNORED CAUTIONARY ADVICE FROM LAWYERS ABOUT THE
10:50AM 9 CONTENT OF THERANOS'S MARKETING. I WON'T SPEND A LOT OF TIME
10:50AM 10 ON THIS, BUT IT'S IMPORTANT TO REMEMBER THAT MR. BALWANI AND
10:50AM 11 MS. HOLMES WERE ADVISED THAT CERTAIN LANGUAGE MIGHT BE
10:50AM 12 PROBLEMATIC ON THE WEBSITE, IN PARTICULAR, LANGUAGE RELATING TO
10:50AM 13 CLAIMS OF "HIGHEST QUALITY" OR "HIGHEST ACCURACY," CLAIMS OF
10:50AM 14 THE TECHNOLOGY BEING FASTER AND EASIER. THE LAWYERS WARNED THE
10:50AM 15 DEFENDANTS NOT TO USE THIS LANGUAGE ON THE WEBSITE.

10:50AM 16 WHAT HAPPENED? WELL, YOU SEE THAT THAT LANGUAGE STAYED ON
10:50AM 17 THE WEBSITE. IT WAS ALSO USED ELSEWHERE IN PATIENT BROCHURES
10:51AM 18 AND CRITICALLY IN INVESTOR PRESENTATIONS.

10:51AM 19 SO THE PRESENTATIONS THAT HOLMES AND BALWANI SUPPLIED TO
10:51AM 20 INVESTORS HAD THIS SAME LANGUAGE.

10:51AM 21 AND THE POINT HERE IS THAT AFTER BEING PUT ON NOTICE THAT
10:51AM 22 THESE KINDS OF CLAIMS MIGHT BE DUBIOUS OR PROBLEMATIC, THEY
10:51AM 23 DIDN'T STOP USING THEM. THEY CONTINUED TO. AND TO BE CANDID,
10:51AM 24 THEY SHOULDN'T HAVE NEEDED A LAWYER TO TELL THEM THAT THESE
10:51AM 25 THINGS WERE FALSE, AND SO MAYBE IT'S NO SURPRISE THAT THEY

1 CONTINUED TO USE THIS LANGUAGE EVEN AFTER BEING ADVISED AGAINST
2 IT.

3 REMEMBER THAT OTHER INDIVIDUALS AT THERANOS DID GET THE
4 MESSAGE. EXHIBIT 1090. I WON'T SHOW IT, BUT YOU'RE FREE TO
5 LOOK AT IT LATER. 1090 IS AN EMAIL WITH A DRAFT OF THE
6 SEPTEMBER 2013 "WALL STREET JOURNAL" ARTICLE, AND IT'S AN
7 INTERNAL EMAIL WHERE A THERANOS EMPLOYEE NAMED JEFF BLICKMAN
8 NOTES ISSUES WITH THE DRAFT ARTICLE. AND ONE ISSUE HE NOTES IS
9 CLAIMS OF IMPROVED ACCURACY.

10 SO OTHER PEOPLE, BESIDES HOLMES AND BALWANI, UNDERSTOOD
11 THAT THAT WAS DANGEROUS TERRITORY, CLAIMS THAT THE COMPANY MAY
12 NOT WANT TO MAKE IF IT WAS CONCERNED WITH BEING HONEST.

13 MR. BALWANI AND MS. HOLMES FELT OTHERWISE.

14 LET'S TALK BRIEFLY ABOUT THE THERANOS BOARD OF DIRECTORS.
15 THE DEFENSE HAS SUGGESTED THAT THE THERANOS BOARD WOULD HAVE
16 BEEN A MODERATING INFLUENCE OR A POLICING INFLUENCE ON THE
17 ACTIONS OF THE COMPANY. I THINK THERE'S A SUGGESTION BY THE
18 DEFENSE THAT BECAUSE THE BOARD WAS FULL OF SO MANY QUALIFIED
19 INDIVIDUALS, NOTHING UNTOWARD COULD HAVE HAPPENED THERE, THAT
20 THOSE WERE STEADY HANDS ON THE WHEEL.

21 THERE'S NO EVIDENCE OF THAT.

22 A FEW THINGS TO KEEP IN MIND. FIRST OF ALL, WHEN IT COMES
23 TO THE MAKEUP AND THE STRUCTURE OF THE BOARD, REMEMBER THAT
24 MS. HOLMES HERSELF WAS THE CHAIR OF THE BOARD, AND MR. BALWANI
25 WAS ALSO A MEMBER. THEY WERE THE ONLY TWO OFFICERS WHO WERE ON

10:53AM 1 THE BOARD, SO THEY HAD BOARD POWER AS MEMBERS AND THEY ALSO HAD
10:53AM 2 THE KNOWLEDGE AND AWARENESS OF THE PEOPLE WHO WERE OPERATING
10:53AM 3 THE COMPANY DAY-TO-DAY.

10:53AM 4 SO IS THERE ANYONE MORE POWERFUL AT THE COMPANY THAN THOSE
10:53AM 5 TWO? THE ANSWER IS NO.

10:53AM 6 THINK ALSO ABOUT THE SOURCES OF INFORMATION THAT WOULD
10:53AM 7 HAVE BEEN AVAILABLE TO THE BOARD.

10:53AM 8 IN EVIDENCE ARE MINUTES OF MEETINGS OF THE BOARD WHERE THE
10:53AM 9 BOARD IS BRIEFED BY MS. HOLMES ON THE OPERATIONS OF THE
10:53AM 10 COMPANY. IS THERE ANY EVIDENCE SHOWING THAT THE BOARD HAD
10:53AM 11 INDEPENDENT ABILITY TO KNOW WHAT WAS HAPPENING AT THE COMPANY,
10:53AM 12 OTHER THAN THROUGH THE DEFENDANTS? I THINK THE ANSWER IS NO.

10:54AM 13 FINALLY, IS THERE ANY EVIDENCE OF THE BOARD ACTUALLY
10:54AM 14 TAKING A ROLE IN RUNNING THE COMPANY? IN ALL OF THE EMAILS
10:54AM 15 THAT YOU'VE SEEN ABOUT PROBLEMS IN THE LAB, RELATIONSHIPS WITH
10:54AM 16 PHARMACEUTICAL COMPANIES, WERE BOARD MEMBERS ON THOSE EMAILS?
10:54AM 17 WHEN INACCURATE RESULTS CAME INTO THE LAB, DID STAFF MEMBERS
10:54AM 18 SAY WE NEED TO CONTACT THE BOARD ABOUT THIS AND SEE WHAT
10:54AM 19 THEY'LL SAY? NO.

10:54AM 20 THE PEOPLE MAKING THOSE DECISIONS WERE MR. BALWANI AND
10:54AM 21 MS. HOLMES. THEY WERE RUNNING THE COMPANY. THEY WERE
10:54AM 22 ACCOUNTABLE TO THE BOARD IN THE DAILY OPERATION, THE DECISIONS
10:54AM 23 THAT MATTER FOR THIS CASE.

10:54AM 24 AND THERE'S NO EVIDENCE THAT THE BOARD WAS AWARE OF THE
10:54AM 25 FALSE STATEMENTS THAT WERE BEING MADE TO VICTIMS IN THIS CASE.

10:54AM 1 THAT'S IMPORTANT TO REMEMBER.

10:54AM 2 SO WAS THE BOARD REALLY A CHECK ON MR. BALWANI'S POWER AT
10:54AM 3 THE COMPANY? WAS THIS ABOUT SUPERVISING THE COMPANY AND
10:54AM 4 ENSURING AGAINST WRONGDOING? OR WAS THE BOARD JUST A GROUP OF
10:54AM 5 POWERFUL PEOPLE TO BE IMPRESSED, ANOTHER AUDIENCE FOR THE
10:54AM 6 DEFENDANTS TO PERFORM FOR?

10:54AM 7 THE EVIDENCE SHOWS YOU THAT MEMBERS OF THE BOARD
10:55AM 8 INFLUENCED -- I'M SORRY, INTRODUCED THE DEFENDANTS TO INVESTORS
10:55AM 9 IN THIS CASE. SO THE CONNECTIONS CREATED BY THAT BOARD, THE
10:55AM 10 CONNECTIONS SUPPLIED BY THE BOARD ACTUALLY BENEFITTED THE
10:55AM 11 COMPANY IN THAT WAY.

10:55AM 12 AS IT FITS INTO THE DEFENDANT'S SCHEMES TO DEFRAUD, THAT
10:55AM 13 WAS THE ROLE OF THE BOARD. NOT A MODERATING INFLUENCE, BUT A
10:55AM 14 TOOL TO BE USED.

10:55AM 15 THE DEFENSE HAS POINTED OUT A FEW TIMES INSTANCES WHERE
10:55AM 16 INFORMATION WAS SHARED WITH PEOPLE OTHER THAN VICTIMS, AND
10:55AM 17 THEY'VE SHOWN THAT TO YOU IN AN ATTEMPT TO CONVINCE YOU THAT
10:55AM 18 CERTAIN THINGS WERE NOT ACTUALLY SECRETS AT THERANOS, OR THAT
10:55AM 19 INFORMATION ACTUALLY WAS NOT WITHHELD INTENTIONALLY FROM THE
10:55AM 20 VICTIMS IN THIS CASE.

10:55AM 21 BUT I'D LIKE TO TALK TO YOU ABOUT THIS CONCEPT OF
10:56AM 22 SELECTIVE HONESTY. IT IS AN IMPORTANT PART OF THIS CASE HOW
10:56AM 23 THE DEFENDANTS HID TRUTH FROM THE VICTIMS IN THE FRAUD WHILE
10:56AM 24 FEEDING THEM DECEPTIVE STATEMENTS THAT LEFT THEM WITH THE WRONG
10:56AM 25 IMPRESSION ABOUT THE COMPANY.

10:56AM 1 ONE EXAMPLE RELATES TO THE LIMITATIONS OF THE THERANOS
10:56AM 2 ANALYZER, WHICH WE'VE TALKED ABOUT, AND THE COMPANY'S RESULTANT
10:56AM 3 RELIANCE ON THIRD PARTY DEVICES.

10:56AM 4 IN ITS OPENING THE DEFENSE SAID THERANOS DID NOT HIDE ITS
10:56AM 5 USE OF COMMERCIAL DEVICES. AND THEY CONTINUED TO SUGGEST
10:56AM 6 SOMETHING SIMILAR IN CLOSING.

10:56AM 7 IS THAT WHAT THE EVIDENCE SHOWS? YOU HAVE HEARD FROM
10:56AM 8 SEVERAL INVESTORS WHO WOULD DISAGREE STRONGLY WITH THAT
10:56AM 9 STATEMENT.

10:56AM 10 FOR EXAMPLE, ONE OF THE EXHIBITS THAT THE DEFENSE ACTUALLY
10:56AM 11 SHOWED YOU ON CLOSING WAS 13720A. THAT'S THE FINANCIAL MODEL
10:56AM 12 PROVIDED TO PFM. THAT FINANCIAL MODEL TALKS ABOUT THERANOS'S
10:56AM 13 COSTS IN BUILDING AND MANUFACTURING ITS OWN MINILAB DEVICE, BUT
10:57AM 14 IT DOESN'T SAY ANYTHING ABOUT PURCHASING COMMERCIAL DEVICES.

10:57AM 15 MR. COOPERSMITH SUGGESTED TO YOU THAT THAT MIGHT NOT BE
10:57AM 16 MISLEADING BECAUSE YOU DON'T KNOW HOW MANY DEVICES THERANOS
10:57AM 17 ALREADY HAD OR WHETHER PURCHASING MORE DEVICES ACTUALLY WOULD
10:57AM 18 HAVE IMPACTED THEIR BOTTOM LINE.

10:57AM 19 BUT THINK ABOUT THE SCALE OF THE ROLLOUT THAT THERANOS WAS
10:57AM 20 CONTEMPLATING; THINK ABOUT THE FACTS THAT THE EDISON WAS ONLY
10:57AM 21 BEING USED FOR 12 OF THE HUNDREDS OF TESTS THAT THEY WERE
10:57AM 22 OFFERING; AND THINK ABOUT WHETHER THAT REALLY MAKES SENSE.

10:57AM 23 IS IT TRUE THAT THE COMPANY'S NEED TO PURCHASE ADDITIONAL
10:57AM 24 THIRD PARTY DEVICES WOULDN'T AFFECT ITS BOTTOM LINE, THAT IT
10:57AM 25 DIDN'T BELONG IN THAT MODEL? THAT DOESN'T MAKE SENSE.

10:57AM 1 WHAT MAKES MORE SENSE IS THAT THIRD PARTY DEVICES WEREN'T
10:57AM 2 MENTIONED IN THAT FINANCIAL MODEL BECAUSE THE DEFENDANT DIDN'T
10:57AM 3 WANT THIS INVESTOR TO KNOW ABOUT THE COMPANY'S USE AND
10:57AM 4 RELIANCE, THE COMPANY'S DEPENDENCE ON OTHER COMPANY'S DEVICES.

10:58AM 5 MR. COOPERSMITH ALSO SHOWED YOU SOME DATA THAT WAS
10:58AM 6 PROVIDED TO INVESTORS THAT PURPORTED TO SHOW THE PERFORMANCE OF
10:58AM 7 THERANOS'S ANALYZERS VERSUS THIRD PARTY ANALYZERS. AND HE
10:58AM 8 SUGGESTED BECAUSE THOSE CHARTS WERE GIVEN TO INVESTORS, THEY
10:58AM 9 SHOULD HAVE BEEN ABLE TO PIECE TOGETHER THAT THERANOS ACTUALLY
10:58AM 10 OWNED THESE THIRD PARTY DEVICES.

10:58AM 11 I THINK THE SUGGESTION IS THAT THAT'S AS GOOD AS
10:58AM 12 DISCLOSING TO THEM THAT THE COMPANY IS RELYING ON THESE THIRD
10:58AM 13 PARTY DEVICES. THAT SHOULD NOT BE CONVINCING TO YOU.

10:58AM 14 THE IDEA THAT INVESTORS NEED TO BECOME DETECTIVES IN THAT
10:58AM 15 WAY AND MAKE ASSUMPTIONS ABOUT THE FACT THAT THERANOS HAD
10:58AM 16 ACCESS TO THIS THIRD PARTY DEVICE AT SOME POINT MUST MEAN THAT
10:59AM 17 THEY'RE USING THEM FOR THE MAJORITY OF THEIR TESTS, THAT'S TOO
10:59AM 18 GREAT A LEAP TO EXPECT FROM INVESTORS. SO THAT ARGUMENT
10:59AM 19 DOESN'T HOLD WATER.

10:59AM 20 AND I THINK WITHOUT IMPUGNING THE MOTIVES OF MY
10:59AM 21 COUNTERPART, YOU SHOULD THINK ABOUT ARGUMENTS LIKE THAT WHEN
10:59AM 22 YOU CONSIDER MR. COOPERSMITH'S CLAIM THAT IT'S THE DEFENSE WHO
10:59AM 23 IS TRYING TO SHOW YOU THE TRUTH.

10:59AM 24 WHEN THE DEFENSE TRIES TO CONVINCE YOU THAT THERANOS WAS
10:59AM 25 OPEN AND TRANSPARENT ABOUT ITS USE OF OTHER METHODS, THEY SHOW

10:59AM 1 YOU LANGUAGE LIKE THIS. THIS IS FROM THE SEPTEMBER 2013 PRESS
10:59AM 2 RELEASE. AND YOU'LL NOTE THAT IT SAYS, "THE SAMPLES ARE EITHER
10:59AM 3 TAKEN FROM A TINY FINGERSTICK OR A MICRO-SAMPLE TAKEN FROM
10:59AM 4 TRADITIONAL METHODS."

10:59AM 5 SO THE DEFENSE POINTS TO THIS AND SAYS, THIS TELLS YOU
10:59AM 6 THAT THERANOS WAS ACTUALLY BEING OPEN ABOUT ITS USE OF VEIN
11:00AM 7 DRAWS, AND MAYBE THAT'S TRUE. BUT LOOK AT WHAT THE LANGUAGE
11:00AM 8 ACTUALLY SAYS. IT SIMPLY SAYS, "THE SAMPLES ARE TAKEN FROM
11:00AM 9 THIS METHOD OR THAT METHOD," BUT NOWHERE IN HERE, OR THE SOURCE
11:00AM 10 OF THE OTHER LANGUAGE THAT THE DEFENSE SHOWS YOU, DOES IT
11:00AM 11 DISCLOSE THAT THE COMPANY ACTUALLY NEEDS TO USE THESE
11:00AM 12 TRADITIONAL METHODS, NEEDS TO USE VEIN DRAWS, DOESN'T HAVE A
11:00AM 13 CHOICE BECAUSE OF LIMITATIONS WITH THE COMPANY'S OWN
11:00AM 14 TECHNOLOGY.

11:00AM 15 THERE'S AN IMPORTANT DIFFERENCE BETWEEN SAYING WE CAN DO
11:00AM 16 TESTING EITHER OF THESE WAYS AND SAYING SOMETIMES WE NEED TO DO
11:00AM 17 A VEIN DRAW OR FREQUENTLY WE NEED TO DO A VEIN DRAW. AND THAT
11:00AM 18 WAS NOT DISCLOSED IN THIS CASE. YOU KNOW THAT FROM THE
11:00AM 19 EVIDENCE.

11:00AM 20 AND YOU KNOW THAT INVESTORS DID NOT KNOW ABOUT THE
11:00AM 21 COMPANY'S USE, AND EXTENSIVE USE REALLY OF THIRD PARTY DEVICES.
11:00AM 22 YOU HEARD FROM MR. JHAVERI THAT HE WOULD HAVE BEEN VERY
11:00AM 23 SURPRISED TO LEARN THAT HIS OWN TEST, HIS DEMO TEST PERFORMED
11:01AM 24 AT THERANOS WAS NOT ACTUALLY RUN ON A THERANOS ANALYZER. THAT
11:01AM 25 KIND OF INFORMATION WAS NOT DISCLOSED TO INVESTORS. INSTEAD,

11:01AM 1 THEY WERE LED TO BELIEVE THAT THE IN-HOUSE DEVICE WAS WHAT WAS
11:01AM 2 BEING DEMONSTRATED TO THEM.

11:01AM 3 AND THE REASON THAT INFORMATION WASN'T SHARED, THE REASON
11:01AM 4 THEY WERE GIVEN THAT FALSE IMPRESSION, IS BECAUSE IT MADE THE
11:01AM 5 COMPANY LOOK BETTER. IT'S FAR MORE IMPRESSIVE IF THE COMPANY
11:01AM 6 CAN DO ALL OF ITS OWN TESTING ON ITS OWN ANALYZER, AND THAT'S
11:01AM 7 WHY THAT LIE WAS TOLD.

11:01AM 8 BY THE WAY, THIS LANGUAGE TALKING ABOUT ELIMINATING THE
11:01AM 9 NEED FOR LARGER NEEDLES AND NUMEROUS VIALS OF BLOOD REQUIRED
11:01AM 10 FOR MOST DIAGNOSTIC LAB TESTING IS STILL MISLEADING GIVEN THE
11:01AM 11 FACT THAT THERANOS WAS USING THE EXACT SAME DEVICES THE EXACT
11:01AM 12 SAME WAY AS OTHER LABS.

11:01AM 13 SO THEY HADN'T ELIMINATED ANY NEED. THERE WAS NOTHING
11:01AM 14 ABOUT THEIR TECHNOLOGY THAT MADE SOMETHING NEW POSSIBLE. THINK
11:01AM 15 ABOUT THAT.

11:02AM 16 WE SHOULD ALSO TALK ABOUT INSTANCES WHERE THERANOS
11:02AM 17 REVEALED THINGS TO REGULATORS THAT WERE NOT REVEALED TO
11:02AM 18 INVESTORS. I THINK THE DEFENSE WANTS YOU TO LOOK AT THOSE
11:02AM 19 EXAMPLES AND CONCLUDE THAT BECAUSE THERANOS WAS OKAY REVEALING
11:02AM 20 CERTAIN DETAILS TO, SAY, THE FDA OR CMS, YOU CANNOT BELIEVE
11:02AM 21 THAT THEY TRIED TO HIDE THOSE DETAILS FROM THE PEOPLE WHO WERE
11:02AM 22 INVESTING IN THE COMPANY.

11:02AM 23 BUT THINK ABOUT HOW DIFFERENT THOSE TWO SITUATIONS ARE.
11:02AM 24 ACTUALLY, BEFORE WE GET TO THAT, ASK YOURSELF WHETHER THERANOS
11:02AM 25 REALLY WAS ALWAYS HONEST WITH REGULATORS AND INSPECTORS?

11:02AM 1 DISCUSSING THIS TOPIC IN HIS CLOSING, MR. COOPERSMITH
11:02AM 2 CALLED THIS ACCUSATION IMAGINARY I THINK WAS THE WORD HE USED.
11:02AM 3 BUT YOU SAW EVIDENCE WITH YOUR OWN EYES. EXHIBIT 4047 IS AN
11:02AM 4 EMAIL FROM MS. HOLMES TO DANIEL YOUNG AND OTHERS ABOUT THE PATH
11:02AM 5 THAT AN INSPECTOR WAS GOING TO TAKE ON AN UPCOMING VISIT TO THE
11:03AM 6 COMPANY.

11:03AM 7 AFTER THAT, DANIEL YOUNG EMAILED DR. ROSENDORFF AND ASKED
11:03AM 8 HIM NOT TO REMIND THE INSPECTOR ABOUT THE DOWNSTAIRS LAB WHERE
11:03AM 9 THE THERANOS-SPECIFIC DEVICES WERE.

11:03AM 10 AND THEN IN EXHIBIT 1295, MR. BALWANI EMAILS RELEVANT
11:03AM 11 PEOPLE ABOUT AN AREA IN THE LAB THAT IS BLOCKED OFF DURING AN
11:03AM 12 INSPECTION, AND HE DIRECTS STAFF WHAT TO TELL THE INSPECTOR
11:03AM 13 ABOUT IT.

11:03AM 14 DR. ROSENDORFF TESTIFIED THAT THAT WAS AN UNUSUAL STEP IN
11:03AM 15 HIS EXPERIENCE AS A LAB DIRECTOR.

11:03AM 16 TO THE EXTENT THAT THERANOS DID DISCLOSE THINGS TO FDA,
11:03AM 17 CMS, OR SIMILAR ORGANIZATIONS, DON'T BE THROWN BY THAT. LIKE I
11:03AM 18 SAID, THINK ABOUT HOW DIFFERENT THAT CIRCUMSTANCE IS. FIRST OF
11:03AM 19 ALL, YOU KNOW THAT THOSE GOVERNMENT AGENCIES HAVE THE RIGHT TO
11:03AM 20 INSPECT. WE SAW THAT HAPPEN IN THE EVIDENCE. THAT HAPPENED IN
11:03AM 21 THE CASE OF THERANOS.

11:03AM 22 SO YOU KNOW THAT LYING TO THOSE AGENCIES IS VERY RISKY
11:03AM 23 BECAUSE THEY HAVE THE ABILITY TO SHOW UP AND CONFIRM THE TRUTH
11:04AM 24 OR FALSITY OF WHAT YOU'RE SAYING, UNLIKE INVESTORS.

11:04AM 25 YOU ALSO KNOW THAT WHEN IT COMES TO REGULATORS, OR YOU CAN

11:04AM 1 INFER THAT WHEN IT COMES TO REGULATION AND THAT KIND OF
11:04AM 2 SUPERVISION, THERE'S AN INCENTIVE TO BE THE SAME AS OTHER PEER
11:04AM 3 LABORATORIES. SO IT'S AN OPPOSITE INCENTIVE VERSUS WHEN YOU'RE
11:04AM 4 TALKING TO AN INVESTOR.

11:04AM 5 WHEN THE DEFENDANTS WERE TALKING TO INVESTORS, THEY WANTED
11:04AM 6 TO PAINT THERANOS AS NEW AND NOVEL, AS SPECIAL AND DIFFERENT.

11:04AM 7 IF A GOVERNMENT REGULATOR VIEWS YOUR LAB THAT WAY, THEY
11:04AM 8 MIGHT HAVE ADDITIONAL QUESTIONS, WOULDN'T THEY?

11:04AM 9 IN THAT CONTEXT WHEN YOU'RE TALKING TO A REGULATOR WHO IS
11:04AM 10 GOING TO SUPERVISE AND INSPECT THE LAB, ISN'T IT BETTER FOR THE
11:04AM 11 INSPECTOR TO KNOW THAT YOU'RE DOING EVERYTHING ELSE IS, THAT
11:04AM 12 YOU'RE USING THE DEVICES THAT ARE FDA APPROVED.

11:05AM 13 SO THERE WAS AN INCENTIVE FOR THE DEFENDANTS TO STRESS
11:05AM 14 OPPOSITE THINGS TO THESE TWO GROUPS OF PEOPLE. WHEN IT CAME TO
11:05AM 15 REGULATORS, TO BE HONEST ABOUT THEIR USE OF FDA APPROVED
11:05AM 16 DEVICES, AND BECAUSE THAT WOULD RESULT IN LESS SCRUTINY, BUT
11:05AM 17 WHEN IT CAME TO INVESTORS, PEOPLE THEY WERE TRYING TO IMPRESS
11:05AM 18 OR GET MONEY FROM, TO EMPHASIZE AND OVERSTATE WHAT MADE
11:05AM 19 THERANOS NEW, DIFFERENT, AND SPECIAL.

11:05AM 20 THEY DIDN'T LIE TO REGULATORS BECAUSE THEY COULDN'T
11:05AM 21 DECEIVE THEM, AND THEY DIDN'T NEED TO.

11:05AM 22 REMEMBER ALSO THAT CMS AND FDA WERE NOT SITTING IN WITH
11:05AM 23 THEIR MEETINGS WITH INVESTORS AND VICTIMS IN THIS CASE, SO
11:05AM 24 THOSE REGULATORS DID NOT KNOW ABOUT THE FALSE STATEMENTS THAT
11:05AM 25 WERE BEING MADE TO OTHERS.

MOVING ALONG HERE.

THERE'S ANOTHER DEFENSE THEME THAT SUGGESTS THAT INVESTORS IN THIS CASE SHOULD HAVE OR DID KNOW BETTER. YOU HEARD FROM A SAMPLING OF THERANOS INVESTORS. EACH OF THEM TOLD YOU ABOUT THE FALSE AND MISLEADING INFORMATION THAT THEY GOT FROM THE DEFENDANTS EITHER IN WRITTEN MATERIALS FROM THE DEFENDANTS AND NEWS ARTICLES CITING ONE OR BOTH OF THEM AS SOURCES, OR IN CONVERSATIONS DIRECTLY WITH THE PEOPLE RUNNING THE COMPANY.

THE DEFENSE ALSO EXPLORED THE DUE DILIGENCE AND RESEARCH THAT WERE -- THAT THESE INVESTORS CONDUCTED, AND THERE MIGHT BE THE INSINUATION OR SUGGESTION TO YOU THAT THEY SHOULD HAVE NOTICED CERTAIN RED FLAGS, THAT THEY SHOULD HAVE BEEN MORE CAREFUL, MORE SKEPTICAL, THAT THEY SHOULD HAVE DONE MORE TO CONFIRM THE TRUTH OF THE THINGS THAT THEY WERE HEARING FROM THE DEFENDANTS.

SOMETHING TO KEEP IN MIND WHEN IT COMES TO THAT, THOUGH. THE COURT IS GOING TO INSTRUCT YOU AGAIN ON THE LAW, AND I EXPECT THE COURT WILL TELL YOU THIS, THAT WHEN IT COMES TO AN ALLEGED VICTIM'S CONDUCT, "AN ALLEGED VICTIM'S NEGLIGENCE IS NOT A DEFENSE TO WIRE FRAUD."

THAT'S CRITICAL TO KEEP IN MIND.

YOUR JOB AS JURORS IS NOT TO WEIGH THE CONDUCT OF THE PEOPLE WHO WERE TAKEN IN BY THIS FRAUD AND DECIDE WHETHER THEY WERE CAREFUL ENOUGH, WHETHER THEY TOOK ENOUGH STEPS TO PROTECT THEMSELVES BEFORE THEY COMMITTED TO INVESTING. THAT'S NOT A

1 QUESTION THAT IS IN FRONT OF YOU.

2 THE FOCUS HERE IS ON THE DEFENDANT'S CONDUCT, HIS INTENT,
3 AND TO THE EXTENT ONE OF THESE VICTIMS, AN INVESTOR, FOR
4 EXAMPLE, MIGHT SEEM NEGLIGENT BECAUSE THEY MADE THE DECISION TO
5 INVEST IN THE COMPANY, THAT IS NOT RELEVANT TO YOUR FINDING OF
6 GUILT OR NOT GUILTY.

7 THE RANGE OF INVESTORS THAT YOU HEARD FROM, IT ALSO TELLS
8 YOU SOMETHING ABOUT THE IMPORTANCE OR NONIMPORTANCE OF THE
9 LEVEL OF DILIGENCE THAT WAS PUT IN HERE. THINK ABOUT THE
10 DIFFERENT INVESTORS THAT YOU HEARD FROM.

11 THERE WAS CHRIS LUCAS, FOR EXAMPLE, WHO TRUSTED MS. HOLMES
12 BASED ON HER RELATIONSHIP WITH HIS UNCLE AND HIS LONG HISTORY
13 WITH THE COMPANY WHO INVESTED AFTER NOT HAVING THE KIND OF
14 INFORMATION FROM THE COMPANY THAT HE WOULD TYPICALLY HAVE;

15 THERE WAS BRIAN GROSSMAN, WHO WAS A VERY SOPHISTICATED
16 INVESTOR, WORKED WITH A TEAM TO EVALUATE THE OPPORTUNITY AT
17 THERANOS, INCLUDING SPECIALISTS, ASKED QUESTIONS, GOT OTHER
18 INFORMATION FROM OTHER PARTIES AS WELL;

19 THERE WAS PATRICK MENDENHALL, WHO GOT VERY DEFINITIVE
20 STATEMENTS FROM MR. BALWANI HIMSELF, BUT WHO DIDN'T SEE THE
21 KIND OF DETAILED PRESENTATIONS THAT OTHER INVESTORS GOT;

22 AND THEN THERE'S ALAN EISENMAN, WHO WAS NEVER HAPPY WITH
23 THE LIMITED AMOUNT OF INFORMATION THAT HE HAD, WHO DID
24 EVERYTHING HE COULD TO TRY TO FIND OUT MORE ABOUT THE COMPANY,
25 INCLUDING MR. BALWANI, BUT WAS SHUT DOWN, AND ULTIMATELY HE WAS

11:08AM 1 FORCED TO RELY ON THE LIMITED INFORMATION THAT HE WAS GETTING
11:08AM 2 FROM THEM.

11:09AM 3 FROM THAT RANGE OF INVESTOR WITNESSES, YOU SEE CLEARLY
11:09AM 4 THAT IT DOESN'T MATTER WHAT APPROACH AN INVESTOR TOOK TO
11:09AM 5 EVALUATING THE OPPORTUNITY WITH THERANOS. AT THE END OF THE
11:09AM 6 DAY, THEY ALL HAD TO RELY ON THE TRUTH OF THE INFORMATION THAT
11:09AM 7 THEY WERE GETTING FROM THE DEFENDANTS.

11:09AM 8 THEY DIDN'T KNOW THAT THEY WERE ACTUALLY GETTING FALSE
11:09AM 9 INFORMATION. THE DEFENDANTS KNEW THAT. THE INVESTORS DIDN'T
11:09AM 10 KNOW WHAT INFORMATION THEY LACKED. THE DEFENDANTS KNEW THAT.
11:09AM 11 SO FAR IT'S EASY TO SAY THAT SOME OF THESE INVESTORS MIGHT HAVE
11:09AM 12 MADE THE WRONG DECISION IN HINDSIGHT. THAT'S TRUE FOR ANYONE
11:09AM 13 WHO IS TAKEN IN BY A FRAUD IT, BUT THIS INSTRUCTION TELLS YOU
11:09AM 14 NOT TO FOCUS ON THEIR OVERSIGHTS, BUT ON THE DEFENDANT'S
11:09AM 15 ACTIONS AND INTENT.

11:09AM 16 IN THAT SAME VEIN, THE DEFENSE LIKES TO POINT TO
11:09AM 17 PROVISIONS IN THE CONTRACT THAT THE INVESTORS SIGNED THAT MAKE
11:09AM 18 STATEMENTS ABOUT INFORMATION AVAILABLE TO THE INVESTORS, THEIR
11:09AM 19 ABILITY TO TAKE A LOSS, THINGS LIKE THAT.

11:10AM 20 BUT DON'T BE CONFUSED BY THAT. THOSE CONTRACTS ARE NOT
11:10AM 21 THE INVESTORS AGREEING TO BE DEFRAUDED.

11:10AM 22 NOWHERE IN THE LANGUAGE WILL YOU FIND ANYTHING THAT
11:10AM 23 PERMITS THE DEFENDANT OR MS. HOLMES TO LIE OR TO DECEIVE
11:10AM 24 INVESTORS. SO THOSE CONTRACTS DON'T PROTECT MR. BALWANI HERE.

11:10AM 25 THE MAIN POINT HERE IS THAT EVEN WHEN PEOPLE KNOW THEY'RE

11:10AM 1 TAKING A RISK, THEY'RE STILL ENTITLED TO TRUE AND ACCURATE
11:10AM 2 INFORMATION UNDER THE LAW.

11:10AM 3 THE DEFENSE'S THEORY HERE THAT IF INVESTORS KNEW THEY
11:10AM 4 MIGHT LOSE THEIR MONEY, THEN MR. BALWANI CAN'T BE GUILTY WOULD
11:10AM 5 ELIMINATE THE POSSIBILITY OF ANY FRAUD IN CONNECTION WITH AN
11:10AM 6 INVESTMENT, AND THAT'S NOT THE LAW.

11:10AM 7 IT WAS STILL WRONG FOR MR. BALWANI TO DECEIVE PEOPLE WHO
11:10AM 8 KNEW THEY WERE TAKING A RISK BECAUSE HE WAS DECEIVING THEM INTO
11:10AM 9 TAKING ON MORE OF A RISK THAN THEY THOUGHT THEY WERE.

11:10AM 10 I'LL SAY THAT AGAIN. MR. BALWANI WAS DECEIVING PEOPLE
11:11AM 11 INTO TAKING ON MORE OF A RISK THAN THEY THOUGHT THEY WERE.
11:11AM 12 THAT'S WHAT MAKES THIS A FRAUD, EVEN THOUGH EVERY INVESTOR WILL
11:11AM 13 ACKNOWLEDGE THAT WITH THE INVESTMENT COMES THE POSSIBILITY OF
11:11AM 14 LOSING THEIR MONEY. THAT DOESN'T MEAN THAT THIS ISN'T A CRIME.

11:11AM 15 SIMILARLY, DON'T BE DISTRACTED BY DEFENSE ARGUMENTS THAT
11:11AM 16 OTHER THINGS BESIDES THE DEFENDANT'S STATEMENTS ALSO MATTERED
11:11AM 17 TO THE INVESTORS. WHEN IT COMES TO WHETHER A STATEMENT IS
11:11AM 18 MATERIAL OR NOT, THE LAW DOES NOT REQUIRE YOU TO CHOOSE ONE
11:11AM 19 PRIMARY THING THAT THE INVESTORS RELIED UPON IN MAKING THEIR
11:11AM 20 DECISION. MULTIPLE THINGS CAN BE MATERIAL. AND THE INVESTORS
11:11AM 21 YOU HEARD FROM CONSISTENTLY TESTIFIED THAT THE INFORMATION THAT
11:11AM 22 THEY GOT FROM THE DEFENDANT MATTERED TO THEM, THAT IT AFFECTED
11:11AM 23 THEIR ANALYSIS. THEY SAID THAT OVER AND OVER AGAIN.

11:11AM 24 THE FACT THAT OTHER THINGS ALSO MATTERED TO THEM DOESN'T
11:11AM 25 DETRACT FROM THAT AND DOESN'T PREVENT A GUILTY VERDICT.

1 FINALLY ON THAT, DON'T FORGET THAT ON THE PATIENT SIDE OF
2 THINGS, UNLIKE INVESTORS, PATIENTS WERE IN NO POSITION TO FACT
3 CHECK THE THINGS THAT THEY WERE HEARING FROM THERANOS. THEY
4 WERE FORCED TO RELY ON THE TRUTH OF THE REPRESENTATIONS THAT
5 THERANOS COULD PROVIDE ACCURATE AND RELIABLE INFORMATION AND
6 TESTING FOR THEM. THEY DIDN'T HAVE ACCESS TO MR. BALWANI OR
7 MS. HOLMES. THEY HAD TO RELY ON THE PUBLIC INFORMATION THAT
8 THE COMPANY AND THE DEFENDANT HAD PUT OUT THERE. SO THINK
9 ABOUT THAT DISADVANTAGE THAT THEY WERE IN AS A RESULT OF THAT.

10 THE DEFENSE ALSO TRIES TO DRAW A CONTRAST BETWEEN WHAT
11 MIGHT BE ALLEGED AS LIES VERSUS WHAT MIGHT BE FORWARD LOOKING
12 STATEMENTS. AND I THINK THEY WANT YOU TO CONCLUDE THAT IF
13 SOMETHING IS A FORWARD LOOKING STATEMENT, IT CAN'T BE
14 DISHONEST, IT CAN'T BE FRAUDULENT. THAT'S NOT TRUE. NO
15 INSTRUCTION IS GOING TO SAY THAT. THE COURT WON'T INSTRUCT YOU
16 THAT THAT'S THE LAW BECAUSE IT'S NOT.

17 THE QUESTION IS NOT ABOUT THE TENSE OF THE STATEMENT THAT
18 THE DEFENDANT MAKES. THE QUESTION IS, IS A CLAIM FROM A
19 DEFENDANT A FALSE AND FRAUDULENT REPRESENTATION MADE WITH THE
20 INTENT TO DECEIVE AND CHEAT, AND THAT CAN BE A PRESENT TENSE
21 STATEMENT, A PAST TENSE STATEMENT, OR A FUTURE TENSE STATEMENT.

22 THIS CAME UP IN PARTICULAR IN CONNECTION WITH FINANCIAL
23 PROJECTIONS THAT WERE PROVIDED TO VICTIMS IN THIS CASE. THIS
24 IS EXHIBIT 1853 IN EVIDENCE.

25 IN PARTICULAR, THESE ARE FINANCIAL PROJECTIONS PROVIDED BY

THE DEFENDANT TO MS. PETERSON AT RDV IN OCTOBER OF 2014.

AND I THINK THE QUESTION PRESENTED BY THE DEFENSE IS,
WELL, HOW CAN FORWARD LOOKING FINANCIAL PROJECTIONS BE
DECEPTIVE? HOW CAN THIS BE A LIE IF IT'S JUST A PREDICTION
ABOUT WHAT MIGHT HAPPEN IN THE FUTURE?

CONSIDER A HYPOTHETICAL. LET'S SAY I COME TO YOU AND TELL
YOU THAT OVER THE NEXT HOUR, I'M GOING TO RUN TEN MILES. THE
QUESTION IS AM I LYING OR NOT? I'LL TELL YOU I HAVE NEVER RUN
A SIX MINUTE MILE, AND I CERTAINLY COULDN'T DO TEN IN A ROW,
BUT MAYBE WITHOUT THAT INFORMATION, WITHOUT KNOWING THAT, YOU
WOULD NOT BE WILLING TO ASSUME THAT I'M BEING DISHONEST. YOU
MIGHT WANT TO GIVE ME THE BENEFIT OF THE DOUBT.

SO LET'S CHANGE THE CIRCUMSTANCES A LITTLE. LET'S ASSUME
THAT NOW INSTEAD OF BEING AT THE BEGINNING OF THAT HOUR, WE'RE
45 MINUTES, 50 MINUTES INTO THAT HOUR, AND I'M STILL CLAIMING
I'M GOING TO RUN 10 MILES IN THIS HOUR, BUT I KNOW THAT I HAVE
NOT EVEN MADE IT TO THE END OF MY DRIVEWAY YET.

AT THAT POINT I DO NOT RECEIVE THE BENEFIT OF THE DOUBT.
I KNOW THERE'S NO WAY THAT I'M GOING TO ACHIEVE WHAT I SAY I'M
GOING TO ACHIEVE AND I'M BEING DISHONEST. THAT'S WHAT YOU'RE
LOOKING AT ON THE SCREEN.

WHEN MR. BALWANI PROVIDED THESE PROJECTIONS IN OCTOBER OF
2014, PROJECTING, FOR EXAMPLE, \$140 MILLION OF REVENUE IN THAT
YEAR, THE YEAR THAT WAS ALMOST OVER, HE WOULD HAVE KNOWN THAT
THERE WAS NO CHANCE OF THAT HAPPENING. HE COULD NOT HAVE HAD A

11:15AM 1 GOOD FAITH BELIEF THAT THAT WAS GOING TO OCCUR.

11:15AM 2 AND HERE'S HOW WE KNOW.

11:15AM 3 LOOK AT THE ACTUAL HISTORICAL INCOME OF THE COMPANY FOR
11:15AM 4 THOSE YEARS, INCLUDING 2014, VERSUS WHAT WAS PROJECTED ON WHAT
11:15AM 5 WE JUST SAW GIVEN TO THE INVESTOR VICTIMS.

11:15AM 6 IN 2014 YOU SEE THAT THE ACTUAL REVENUE FOR THE COMPANY
11:15AM 7 ENDED UP BEING A MERE \$150,000. SO IN OCTOBER OF 2014 ON THE
11:15AM 8 ROAD TO EARNING \$140 MILLION THAT YEAR, THERANOS HADN'T EVEN
11:15AM 9 REACHED THE END OF ITS DRIVEWAY, IT HADN'T EVEN TIED ITS SHOES,
11:16AM 10 IT WAS SO FAR OFF THE MARK FOR THAT PROJECTION, THAT YOU CAN BE
11:16AM 11 CONFIDENT VIEWING THIS AS A DISHONEST PROJECTION. AND THAT'S
11:16AM 12 AN EXAMPLE OF HOW EVEN A FORWARD LOOKING STATEMENT CAN BE
11:16AM 13 DISHONEST IF WHEN IT'S MADE, THE PERSON MAKING IT KNOWS THAT
11:16AM 14 IT'S NOT GOING TO HAPPEN.

11:16AM 15 BY THE WAY, WHEN IT COMES TO THOSE 2015 NUMBERS, BOTH
11:16AM 16 SIDES HAVE DISCUSSED AND WITNESSES HAVE DISCUSSED HOW THAT
11:16AM 17 RELATES TO OR WOULD DEPEND ON THE STATUS OF THE WALGREENS
11:16AM 18 ROLLOUT AT THAT TIME.

11:16AM 19 AND THE EVIDENCE HAS SHOWN IN THIS TRIAL THAT MR. BALWANI
11:16AM 20 KNEW AT THIS TIME THAT THE WALGREENS ROLLOUT WAS STALLING, THAT
11:16AM 21 HE HAD NO GOOD FAITH REASON TO BELIEVE THAT THIS MANY LOCATIONS
11:16AM 22 WOULD BE ACHIEVABLE AT THAT TIME, AND THAT MEANS THAT HE WOULD
11:16AM 23 HAVE NO GOOD FAITH BELIEF IN THE TRUTH OF THAT REVENUE
11:16AM 24 PROJECTION.

11:17AM 25 YOU'LL RECALL THE DEFENSE'S BACK AND FORTH WITH

11:17AM 1 MR. JHAVERI, THE WALGREENS REP, ABOUT 2,000 STORES VERSUS 200
11:17AM 2 STORES; THE DEFENSE'S INSISTENCE THAT MR. JHAVERI MUST HAVE
11:17AM 3 MEANT 2,000 STORES AND MR. JHAVERI STAYING FIRM THAT, NO, HE
11:17AM 4 WAS VERY CLEAR WITH MR. BALWANI THAT 200 WAS THE NUMBER. AND
11:17AM 5 WHEN HE SAID WE ARE GOING TO TOUCH 200 STORES, HE DIDN'T MEAN
11:17AM 6 REACH THAT LEVEL AT THE THERANOS ROLLOUT, HE MEANT THAT THEY
11:17AM 7 ARE GOING TO BE RENOVATING OR MAKING CHANGES TO THOSE STORES SO
11:17AM 8 THAT'S A GOOD TIME TO SEE WHICH ONE OF THEM WOULD BE PART OF
11:17AM 9 THAT THERANOS PROJECT.

11:17AM 10 MR. COOPERSMITH CONTINUES TO DISAGREE WITH MR. JHAVERI
11:17AM 11 ABOUT WHAT MR. JHAVERI MEANT.

11:17AM 12 HE'S FORCING YOU TO MAKE A CHOICE BETWEEN THE TESTIMONY OF
11:17AM 13 THIS WITNESS WHO ACTUALLY LIVED THESE EVENTS, MADE THESE
11:17AM 14 COMMUNICATIONS, OR TO REJECT THAT AND ACCEPT THE LAWYER'S
11:18AM 15 CHARACTERIZATION INSTEAD.

11:18AM 16 WE TALKED EARLIER ABOUT HOW STATEMENTS MADE BY LAWYERS ON
11:18AM 17 EITHER SIDE ARE NOT EVIDENCE. I WOULD JUST URGE YOU TO KEEP
11:18AM 18 THAT IN MIND IN MAKING THAT DECISION THAT MR. COOPERSMITH IS
11:18AM 19 ASKING YOU TO MAKE BETWEEN BELIEVING THE WITNESS OR BELIEVING
11:18AM 20 HIM.

11:18AM 21 SIMILARLY, WHEN THE DEFENSE SHOWED YOU DURING CLOSING
11:18AM 22 EXHIBIT 1896, THAT IS AN EMAIL FROM MR. JHAVERI FROM AUGUST OF
11:18AM 23 2014 REFERENCING THE NEED TO GET VENOUS DOWN TO
11:18AM 24 10 PERCENT. THE SELECTION THE DEFENSE SHOWED YOU ACTUALLY
11:18AM 25 STOPPED JUST ABOVE A CRITICAL LINE IN THAT DOCUMENT, AND FEEL

11:18AM 1 FREE TO GO LOOK AT IT WHEN YOU'RE DELIBERATING. IT'S
11:18AM 2 EXHIBIT 1896 WHERE MR. JHAVERI SAYS REFERENCE TO GET VENOUS
11:18AM 3 DOWN TO 10 PERCENT, WE NEED TO HAVE A DOCUMENTED DETAILED PLAN
11:18AM 4 ON BOTH OR IT WILL BE DIFFICULT FOR ME HAVE TO CONVINCE
11:18AM 5 EXPANSION BEYOND ARIZONA.

11:19AM 6 SO MR. JHAVERI PUTTING MR. BALWANI DIRECTLY ON NOTICE THAT
11:19AM 7 UNLESS VEINOUS DROPS, UNLESS THAT PERCENTAGE GOES DOWN, THE
11:19AM 8 WALGREENS ROLLOUT WITH THERANOS MIGHT BE LIMITED ONLY TO
11:19AM 9 ARIZONA, THAT IT MIGHT NOT GO NATIONWIDE AT ALL.

11:19AM 10 IT'S ALSO REALLY IMPORTANT NOT TO FORGET OTHER STATEMENTS
11:19AM 11 MADE BY MR. BALWANI AND MS. HOLMES THAT ARE NOT IN THE FUTURE
11:19AM 12 TENSE. I'M SHOWING YOU A SLIDE FROM INVESTOR PRESENTATIONS
11:19AM 13 THAT WERE GIVEN TO MULTIPLE INVESTORS IN THIS CASE, AND LOOK AT
11:19AM 14 THE LANGUAGE USED HERE. HERE'S THE CLAIM THAT "THERANOS RUNS
11:19AM 15 ANY TEST AVAILABLE IN CENTRAL LABORATORIES, AND PROCESSES ALL
11:19AM 16 SAMPLE TYPES." RIGHT UNDERNEATH A PICTURE OF A FINGERSTICK
11:19AM 17 BLOOD DRAW.

11:19AM 18 WHAT WOULD AN INVESTOR TAKE AWAY FROM SEEING THAT
11:19AM 19 LANGUAGE? WHAT ELSE COULD THEY TAKE AWAY EXCEPT THAT
11:19AM 20 THERANOS'S TECHNOLOGY COULD RUN ANY TEST USING THIS METHOD?

11:19AM 21 BELOW THAT IT SAYS, "THERANOS PROVIDES THE HIGHEST LEVEL
11:20AM 22 OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN OUR PRE- AND
11:20AM 23 POST-ANALYTIC PROCESSES ENSURING THE HIGHEST LEVELS OF ACCURACY
11:20AM 24 AND PRECISION."

11:20AM 25 WHAT ELSE COULD AN INVESTOR TAKE AWAY FROM THAT, EXCEPT

11:20AM 1 WHAT THAT LANGUAGE SAYS, THAT THERANOS IS CAPABLE OF THOSE
11:20AM 2 THINGS AT THAT TIME.

11:20AM 3 SIMILAR CLAIMS HERE ABOUT THE HIGHEST LEVELS OF ACCURACY.
11:20AM 4 THERANOS OFFERS TESTS WITH THE HIGHEST LEVELS OF ACCURACY.
11:20AM 5 AGAIN, THIS WAS PRESENTED DURING THE TIME WHEN THERANOS HAD
11:20AM 6 BEGUN PATIENT TESTING. THERE WOULD HAVE BEEN NO REASON FOR
11:20AM 7 ANYONE SEEING THIS PRESENTATION TO THINK THAT THIS WAS FUTURE
11:20AM 8 OR SPECULATIVE INFORMATION. THERE WAS NO WAY IT WAS EXPLAINED
11:20AM 9 THAT WAY.

11:20AM 10 ON THE CONTRARY. THE WITNESSES TOLD YOU WHEN THIS
11:20AM 11 INFORMATION WAS PRESENTED IN PERSON, WHAT MS. HOLMES AND
11:20AM 12 MR. BALWANI SAID WAS CONSISTENT WITH THIS; THAT THESE WERE
11:20AM 13 PRESENTED AS PRESENT TENSE OR PAST TENSE ACHIEVEMENTS, THINGS
11:20AM 14 THAT THE COMPANY WAS CAPABLE OF AT THAT TIME.

11:21AM 15 LOOKING AT THIS, YOU MIGHT DECIDE THAT THESE INVESTOR
11:21AM 16 PRESENTATIONS ARE THE MOST IMPORTANT EVIDENCE IN THE CASE. AND
11:21AM 17 YOU SHOULD KEEP THAT IN MIND WHEN YOU THINK ABOUT THE
11:21AM 18 COMPLAINTS FROM THE DEFENSE ABOUT CERTAIN THINGS THAT ARE
11:21AM 19 MISSING. FOR EXAMPLE, MR. COOPERSMITH MENTIONED OVER AND OVER
11:21AM 20 AGAIN THE FACT THAT YOU WERE NOT PLAYED A TAPE OF A SINGLE
11:21AM 21 CONVERSATION THAT MS. HOLMES HAD WITH SOME INVESTORS.

11:21AM 22 AND HE CRITICIZED THE GOVERNMENT FOR NOT PROVIDING YOU
11:21AM 23 THAT EXACT LANGUAGE THAT MS. HOLMES WOULD HAVE USED IN THAT
11:21AM 24 CALL.

11:21AM 25 WELL, THANKFULLY FOR THE DECISION THAT YOU NEED TO MAKE,

1 YOU HAVE HUNDREDS OF PAGES OF THE EXACT LANGUAGE THAT
2 MR. BALWANI AND MS. HOLMES PROVIDED TO INVESTORS IN THESE
3 MEETINGS WHERE THEY WERE SEEKING INVESTMENTS FROM THESE WEALTHY
4 INDIVIDUALS.

5 IN CLOSING MR. COOPERSMITH DESCRIBED THESE PRESENTATIONS
6 IN A WAY THAT MINIMIZED THEM I THINK YOU'LL RECALL. I THINK
7 THE WORD HE USED WAS "HODGEPODGE." HE EXPLAINED OR CLAIMED
8 THAT THIS WAS A COLLECTION OF MATERIALS PREPARED FOR DIFFERENT
9 REASONS, AND I JUST WANT TO MAKE SURE THAT WE'RE CLEAR ABOUT
10 WHAT THESE ARE. THESE ARE THE WRITTEN MATERIALS THAT THE
11 DEFENDANTS WHO RAN THIS COMPANY WERE GIVING TO VERY WEALTHY
12 POTENTIAL INVESTORS, WHEN THEY WERE ASKING THOSE INVESTORS TO
13 MAKE THE DECISION TO INVEST TENS OF MILLIONS, SOMETIMES UPWARDS
14 OF A HUNDRED MILLION DOLLARS IN THE COMPANY. YOU SHOULD NOT
15 BELIEVE ANY SUGGESTION THAT THESE WRITTEN MATERIALS WERE NOT
16 CLOSELY MONITORED AND PAID ATTENTION TO BY THE TOP TWO PEOPLE
17 AT THIS COMPANY. THESE WERE VERY IMPORTANT. THESE MATERIALS
18 HAD AN IMPORTANT ROLE TO PLAY. MILLIONS AND MILLIONS, HUNDREDS
19 OF MILLIONS OF DOLLARS RODE ON THE ABILITY OF THESE WRITTEN
20 MATERIALS TO CONVINCe PEOPLE TO WRITE CHECKS TO THE COMPANY.

21 SO YOU SHOULD PAY ATTENTION TO THE LANGUAGE HERE JUST LIKE
22 THE INVESTOR VICTIMS DID. THAT'S WHAT THE DEFENDANTS WANTED
23 THEM TO DO.

24 YOUR HONOR, I'M ABOUT TO SHIFT GEARS TO A DIFFERENT TOPIC.
25 I'M STILL ON TRACK -- I'M FAR MORE THAN HALF WAY DONE, BUT

11:23AM 1 NOW MIGHT BE A GOOD TIME FOR A BREAK.

11:23AM 2 THE COURT: OKAY. ALL RIGHT. LET'S DO THAT.

11:23AM 3 SHOULD WE TAKE A 20 MINUTE BREAK? LET'S TAKE A 20 MINUTE

11:23AM 4 BREAK, LADIES AND GENTLEMEN, AND THEN WE'LL RETURN.

11:23AM 5 (RECESS FROM 11:23 A.M. UNTIL 12:00 P.M.)

12:01PM 6 THE COURT: ALL RIGHT. THANK YOU.

12:01PM 7 WE'RE BACK ON THE RECORD. OUR JURY AND ALTERNATES ARE

12:01PM 8 PRESENT. ALL COUNSEL, MR. BALWANI IS PRESENT.

12:01PM 9 MR. BOSTIC, WOULD YOU LIKE TO CONTINUE?

12:01PM 10 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

12:01PM 11 MEMBERS OF THE JURY, WELCOME BACK. I JUST HAVE A COUPLE

12:01PM 12 MORE TOPICS TO DISCUSS WITH YOU. MAYBE A QUARTER LEFT IN OUR

12:01PM 13 CONVERSATION FOR TODAY.

12:01PM 14 LET'S TALK NEXT ABOUT ELIZABETH HOLMES AND HER ROLE HERE.

12:01PM 15 THE DEFENSE MADE SOME MENTION OF MS. HOLMES IN THEIR CLOSING,

12:02PM 16 AND THE SUGGESTION WAS THAT MR. BALWANI WOULD HAVE HAD THE SAME

12:02PM 17 PERSPECTIVE ON MS. HOLMES AS EVERYONE ELSE THAT YOU HEARD ABOUT

12:02PM 18 IN THIS CASE; THAT HE WOULD HAVE BEEN IMPRESSED BY HER

12:02PM 19 CHARISMA, HER DEDICATION, HER INTELLIGENCE.

12:02PM 20 AND THOSE THINGS MAY BE TRUE TO A CERTAIN EXTENT. BUT YOU

12:02PM 21 SHOULD NOT BELIEVE THAT MR. BALWANI'S PERSPECTIVE ON MS. HOLMES

12:02PM 22 WAS THE OUTSIDER'S PERSPECTIVE. HE WOULD NOT HAVE BEEN STAR

12:02PM 23 STRUCK BY HER. HE KNEW HER VERY WELL. AS YOU KNOW, THEY WERE

12:02PM 24 NOT JUST BUSINESS PARTNERS, THEY WERE ALSO ROMANTIC PARTNERS.

12:02PM 25 THEY COLLABORATED TOGETHER ON MANY, IF NOT ALL, ASPECTS OF

12:02PM 1 RUNNING THIS COMPANY TOGETHER. SO THEY WERE PARTNERS IN EVERY
12:02PM 2 SENSE OF THE WORD.

12:02PM 3 IN THE FIRST MINUTE OF THE DEFENSE OPENING, YOU HEARD THE
12:02PM 4 CLAIM SUNNY BALWANI DID NOT START THERANOS, HE DID NOT CONTROL
12:03PM 5 THERANOS, HE DID NOT HAVE FINAL BUSINESS DECISION MAKING
12:03PM 6 AUTHORITY AT THERANOS.

12:03PM 7 AFTER THE TRIAL, THERE REMAINS NO DISPUTE AT LEAST ON THAT
12:03PM 8 FIRST POINT. MR. BALWANI WAS NOT THERE AT THE INCEPTION OF THE
12:03PM 9 COMPANY. MS. HOLMES FOUNDED IT, AND HE JOINED LATER.

12:03PM 10 BUT WHEN IT COMES TO HIS CONTROL AT THE COMPANY, HIS
12:03PM 11 DECISION MAKING POWER, THE EVIDENCE HAS SHOWN THAT HE HAD A LOT
12:03PM 12 AT THE COMPANY AND THAT HE WIELDED IT.

12:03PM 13 IN CLOSING, THE DEFENSE SAID SOMETHING A LITTLE DIFFERENT.
12:03PM 14 MR. COOPERSMITH SAID MR. BALWANI WAS THE COO AND PRESIDENT OF
12:03PM 15 THERANOS. OF COURSE HE HAD A HAND IN MAKING DECISIONS AT
12:03PM 16 THERANOS. DEFENSE HAS NEVER SAID OTHERWISE.

12:03PM 17 HE ALSO SAID THAT MR. BALWANI WAS A VERY SENIOR OFFICER AT
12:03PM 18 THERANOS, THAT THE DEFENSE WASN'T CLAIMING OTHERWISE, AND THAT
12:03PM 19 HE WAS RESPONSIBLE, ALONG WITH MS. HOLMES, FOR THE OPERATION OF
12:03PM 20 THERANOS.

12:04PM 21 THAT IS TRUE, AND THAT IS WHAT THE EVIDENCE HAS SHOWN.

12:04PM 22 THE EVIDENCE HAS SHOWN THAT MS. HOLMES AND MR. BALWANI
12:04PM 23 WERE REALLY IN THEIR OWN CATEGORY OF LEADERSHIP AT THE COMPANY.
12:04PM 24 SOME COMPANIES YOU MIGHT IMAGINE ARE A LADDER WITH PEOPLE AT
12:04PM 25 ALL DIFFERENT LEVELS OF LEADERSHIP, SOME COMPANIES MIGHT BE RUN

12:04PM 1 BY A SINGLE PERSON. THIS WAS AN ORGANIZATION RUN AND
12:04PM 2 CONTROLLED BY TWO PEOPLE WHO WIELDED THAT POWER TOGETHER, AND
12:04PM 3 THAT'S WHAT THE EVIDENCE HAS SHOWN, THAT'S WHAT THE DOCUMENTS
12:04PM 4 SHOW, THAT'S WHAT THE WITNESSES HAVE TESTIFIED TO.

12:04PM 5 MR. BALWANI WAS WITH MS. HOLMES AT THE TOP OF THE ORG
12:04PM 6 CHART FOR THE COMPANY. HE WAS THE CHIEF OPERATING OFFICER AND
12:04PM 7 PRESIDENT.

12:04PM 8 MS. HOLMES AND MR. BALWANI WERE ALSO THE ONLY TWO OFFICERS
12:04PM 9 OF THE COMPANY WHO WERE ON THE BOARD AS WELL. SO THEY WERE THE
12:04PM 10 ONLY PEOPLE WHO HAD THAT BOARD AUTHORITY AND WERE ALSO INVOLVED
12:04PM 11 IN THE DAY-TO-DAY RUNNING OF THE COMPANY'S OPERATIONS.

12:04PM 12 WHEN MR. EDLIN WAS ON THE STAND, AND YOU RECALL THAT HE
12:04PM 13 WAS A LONG-TIME EMPLOYEE AT THERANOS WHO WAS FRIENDS WITH
12:05PM 14 MS. HOLMES'S BROTHER FROM COLLEGE, AND HE HAD A GOOD SENSE OF
12:05PM 15 MS. HOLMES AND MR. BALWANI'S WORKING RELATIONSHIP BECAUSE OF
12:05PM 16 WHERE HE SAT IN THE COMPANY AND HIS ROLE AT THE COMPANY.

12:05PM 17 AND HE TESTIFIED THAT THEY COLLABORATED ON MANY THINGS,
12:05PM 18 THAT HE SAW THEM HAVING CONVERSATIONS FREQUENTLY ABOUT THE
12:05PM 19 COMPANY, THAT THEY BOTH HAD A GREAT DEAL OF AUTHORITY IN THE
12:05PM 20 COMPANY, AND THAT THEY WERE IN THEIR OWN CATEGORY AT THE
12:05PM 21 COMPANY IN TERMS OF HAVING ACCESS TO ALL INFORMATION.

12:05PM 22 YOU HEARD WITNESSES TALK ABOUT HOW INFORMATION AT THE
12:05PM 23 COMPANY WAS SILOED, HOW THERE WERE RULES AND RESTRICTIONS ON
12:05PM 24 THE ABILITY OF EMPLOYEES TO SHARE INFORMATION, NOT JUST OUTSIDE
12:05PM 25 OF THE COMPANY BUT WITHIN THE COMPANY AS WELL. THERE WERE

12:05PM 1 SECRETS THAT EMPLOYEES WERE REQUIRED TO KEEP FROM EACH OTHER.

12:05PM 2 NONE OF THAT APPLIED TO MR. BALWANI OR MS. HOLMES. THAT'S
12:05PM 3 WHAT MR. EDLIN TOLD YOU. THEY WERE THE ONLY PEOPLE WHO HAD
12:05PM 4 THAT STATUS, THE STATUS OF BEING ALLOWED TO KNOW EVERYTHING
12:05PM 5 THAT WAS HAPPENING IN THE COMPANY.

12:05PM 6 AND THE EVIDENCE SUGGESTS THAT THEY DID HAVE COMPLETE
12:06PM 7 COMPREHENSIVE KNOWLEDGE OF WHAT WAS HAPPENING AT THERANOS, AND
12:06PM 8 IMPORTANTLY FOR THIS CASE, WHAT WAS NOT HAPPENING AT THERANOS.

12:06PM 9 IT'S NO SURPRISE THAT MR. BALWANI HAD A LOT OF AUTHORITY.
12:06PM 10 BESIDES HIS POSITION THAT WE TALKED ABOUT, YOU CAN ALSO INFER
12:06PM 11 THAT HIS CLOSE RELATIONSHIP WITH MS. HOLMES WOULD HAVE GIVEN
12:06PM 12 HIM A LOT OF INFLUENCE OVER HER, MORE THAN JUST HIS TITLE ALONE
12:06PM 13 WOULD PROVIDE.

12:06PM 14 REMEMBER ALSO THAT MR. BALWANI WAS OLDER AND MORE
12:06PM 15 EXPERIENCED THAN MS. HOLMES. SO IT WOULD BE NO SURPRISE THAT
12:06PM 16 HIS ADVISE, HIS INPUT WOULD CARRY A LOT OF WEIGHT WITH HER.
12:06PM 17 AND THAT'S WHAT SHOWED UP IN THE TEXT MESSAGES.

12:06PM 18 IF YOU LOOK AT 5387H, YOU'LL GET A SENSE OF HOW THEY
12:06PM 19 INTERACTED WITH EACH OTHER AND YOU WILL SEE THAT MR. BALWANI
12:06PM 20 WAS NOT SHY ABOUT EXPRESSING HIS OPINIONS AND THAT MS. HOLMES
12:06PM 21 WAS RECEPTIVE TO THAT INPUT FROM MR. BALWANI.

12:06PM 22 AND SPEAKING OF MR. BALWANI NOT BEING SHY, I THINK YOU
12:07PM 23 ALSO HAVE A SENSE FROM THE WITNESS TESTIMONY AND FROM THE
12:07PM 24 CORRESPONDENCE THAT YOU'VE SEEN THAT MR. BALWANI WAS NOT
12:07PM 25 HESITANT ABOUT THROWING HIS WEIGHT AROUND AT THE COMPANY. HE

12:07PM 1 DIDN'T MINCE WORDS. HE WAS VERY, I THINK, DIRECT WOULD BE A
12:07PM 2 CHARITABLE WAY TO PUT IT. SO PEOPLE KNEW WHAT HIS WORDS WERE,
12:07PM 3 AND HE CERTAINLY DID NOT HOLD BACK IN USING HIS AUTHORITY ABOUT
12:07PM 4 WHAT WAS GOING TO HAPPEN AT THE COMPANY THAT HE WAS RUNNING.

12:07PM 5 NOWHERE WAS THIS MORE EVIDENT THAN IN THE LAB. THE CLIA
12:07PM 6 LAB WAS THE CENTER OF THERANOS IN MANY WAYS. IT WAS THE PLACE
12:07PM 7 WHERE PATIENT SAMPLES WERE ACTUALLY TESTED. SO THE SERVICE
12:07PM 8 THAT THE COMPANY WAS OFFERING TO THE PUBLIC OF BLOOD TESTING
12:07PM 9 FOR CLINICAL USE, THIS ALL HAPPENED WITHIN THE CLIA LAB.

12:07PM 10 AND HERE YOU SEE THE ORG CHART FOR THAT PART OF THE
12:07PM 11 COMPANY WITH MR. BALWANI SITTING ON TOP OF EVERYONE WHO WORKED
12:07PM 12 IN THE LAB AND THE ONLY PERSON ABOVE HIM BEING MS. HOLMES.

12:08PM 13 ONE INTERESTING THING JUST TO REMIND YOU, MR. BALWANI WAS
12:08PM 14 ALSO LISTED AS A CLINICAL LAB ASSISTANT. AND YOU CAN SEE THAT
12:08PM 15 WITH HIS MBA THAT HE REALLY STANDS OUT IN THAT LIST.

12:08PM 16 SO NOT ONLY WAS MR. BALWANI VERY INVOLVED IN THE LAB, BUT
12:08PM 17 HE WAS KIND OF SANDWICHING BOTH ENDS OF THE LAB IN TERMS OF THE
12:08PM 18 ORG CHART.

12:08PM 19 AND THE EVIDENCE SHOWED THAT THIS WASN'T JUST A POSITION
12:08PM 20 ON PAPER. MR. BALWANI WAS VERY INVOLVED IN THE DAY-TO-DAY
12:08PM 21 RUNNING OF THE LAB. WHEN ISSUES CAME UP, MR. BALWANI WAS TOLD.
12:08PM 22 HE MADE DECISIONS ABOUT HOW TO RESPOND TO ISSUES THAT CAME UP
12:08PM 23 IN THE LAB.

12:08PM 24 SO WHEN YOU -- KEEP IN MIND THAT THE LAB WAS REALLY GROUND
12:08PM 25 ZERO FOR ALL OF THE PROBLEMS THAT THERANOS HAD WITH TESTING

12:08PM 1 ACCURACY AND RELIABILITY. THAT TELLS YOU THAT MR. BALWANI
12:08PM 2 WOULD HAVE BEEN AWARE OF THOSE PROBLEMS. AND YOU SEE THE
12:08PM 3 DIRECT EVIDENCE THAT HE WAS AWARE OF THOSE PROBLEMS. YOU DON'T
12:08PM 4 NEED TO INFER OR GUESS THAT.

12:09PM 5 NOT WAS MR. BALWANI IN A FRONT ROW SEAT FOR THOSE
12:09PM 6 PROBLEMS, BUT HE WAS ALSO IN THE DRIVER SEAT BECAUSE HE WAS THE
12:09PM 7 ONE WHO WAS RESPONSIBLE FOR THE OPERATIONS OF THE LAB. AND YOU
12:09PM 8 SEE THAT EVEN BEYOND BEING RESPONSIBLE FOR THE BUSINESS
12:09PM 9 OPERATIONS, HE ALSO FREQUENTLY OVERRODE OR OVERRULED PEOPLE IN
12:09PM 10 THE LAB DIRECTOR POSITION WHO SHOULD HAVE BEEN MAKING DECISIONS
12:09PM 11 ABOUT WHETHER TESTS WERE APPROPRIATE FOR USE ON PATIENTS OR
12:09PM 12 NOT.

12:09PM 13 SO MR. BALWANI, VERY INVOLVED ON THE LAB SIDE OF THINGS,
12:09PM 14 VERY INVOLVED IN THE ASPECTS OF THE COMPANY THAT WERE FACING
12:09PM 15 PATIENTS, BUT HE WAS FAR FROM PASSIVE ON THE INVESTOR SIDE.

12:09PM 16 YOU HEARD TESTIMONY ABOUT MR. BALWANI AND MS. HOLMES
12:09PM 17 MAKING DECEPTIVE PITCHES TO INVESTORS TOGETHER, THEM BOTH BEING
12:10PM 18 IN THE ROOM WHILE INFORMATION WAS PRESENTED TO INVESTORS IN
12:10PM 19 ORDER TO GIVE THEM A FALSE IMPRESSION OF WHAT WAS HAPPENING AT
12:10PM 20 THE COMPANY.

12:10PM 21 YOU ALSO SAW THEIR TEXT MESSAGES AND WHERE THEY
12:10PM 22 COORDINATED ABOUT INCOMING INVESTMENTS.

12:10PM 23 SO MR. BALWANI WAS CERTAINLY NOT LEAVING THAT SIDE OF
12:10PM 24 THINGS TO MS. HOLMES, HE WAS AN ACTIVE PARTICIPANT IN THAT
12:10PM 25 SIDE, TOO.

12:10PM 1 AND THE BEST EXAMPLE, PERHAPS THE BEST ABOUT EXAMPLE OF
12:10PM 2 THIS THAT YOU HAVE SEEN IS IN A CONVERSATION THAT HE HAD WITH
12:10PM 3 AN INVESTOR NAMED PAT MENDENHALL. AND THIS EMAIL WILL BE
12:10PM 4 FAMILIAR TO YOU. THIS IS EXHIBIT 4059. THIS IS A VERY
12:10PM 5 IMPORTANT EXHIBIT WHEN IT COMES TO SHOWING MR. BALWANI'S ACTIVE
12:10PM 6 PARTICIPATION, NOT JUST HIS SUPPORT FOR THE INVESTOR SIDE OF
12:10PM 7 THE FRAUD, BUT HIS ACTIVE PARTICIPATION, HELPING THAT SIDE OF
12:10PM 8 THINGS WHEN HE WAS AT THERANOS.

12:10PM 9 YOU'LL RECALL THAT IN DECEMBER 2013 THERANOS WAS PITCHING
12:10PM 10 TO A NUMBER OF DIFFERENT INVESTORS. THEY NEEDED MONEY, THEY
12:11PM 11 WERE PERSUADING INDIVIDUALS TO WRITE CHECKS TO THE COMPANY SO
12:11PM 12 THAT THE COMPANY CAN CONTINUE OPERATIONS.

12:11PM 13 WHEN MR. MENDENHALL NEEDED INFORMATION, THE EVIDENCE SHOWS
12:11PM 14 THAT MS. HOLMES PUT HIM IN TOUCH WITH SUNNY BALWANI. THAT'S
12:11PM 15 IMPORTANT.

12:11PM 16 AROUND THIS TIME YOU KNOW THAT MS. HOLMES WAS ESPECIALLY
12:11PM 17 ACTIVE IN DECEIVING MULTIPLE INVESTORS IN A VARIETY OF TOPICS,
12:11PM 18 AND MR. BALWANI WAS INVOLVED AS WELL AND HE WAS ASSISTING WITH
12:11PM 19 THAT. THERE WERE SOME INVESTORS WHO MS. HOLMES SPOKE WITH ON
12:11PM 20 HER OWN.

12:11PM 21 WHEN MS. HOLMES PUT MR. MENDENHALL IN TOUCH WITH
12:11PM 22 MR. BALWANI, IT TELLS YOU SOMETHING IMPORTANT ABOUT THE NATURE
12:11PM 23 OF THEIR PARTNERSHIP AND HOW THEY WORKED TOGETHER HERE BECAUSE
12:11PM 24 THINK ABOUT WHAT WAS AT STAKE. THE COMPANY WAS RAISING MONEY
12:11PM 25 FROM A SERIES OF VERY WEALTHY INDIVIDUALS, SO A LOT RODE ON

1 EACH ONE OF THESE CONVERSATIONS.

2 ANY ONE OF THESE CONVERSATIONS COULD HAVE RESULTED IN A
3 MULTIMILLION DOLLAR CHECK BEING WRITTEN TO THE COMPANY, PERHAPS
4 FOR TENS OF MILLIONS, PERHAPS FOR HUNDREDS OF MILLIONS OF
5 DOLLARS.

6 OR IF THE CONVERSATION DID NOT GO WELL, THAT COULD RESULT
7 IN ZERO MONEY COMING IN FOR THE COMPANY, IT COULD RESULT IN BAD
8 WORD OF MOUTH FOR THE COMPANY IN THE INVESTOR COMMUNITY,
9 BECAUSE THE DEFENDANTS WERE AWARE OF HOW THESE INVESTORS
10 COMMUNICATED WITH EACH OTHER AS WELL.

11 INFORMATION WAS SPREADING NOT JUST DIRECTLY FROM THE
12 DEFENDANTS BUT ALSO BETWEEN THE PEOPLE THAT THE DEFENDANTS WERE
13 TALKING TO.

14 SO WHEN MR. MENDENHALL WANTED TO ASK QUESTIONS ABOUT THE
15 COMPANY, WHAT DOES IT TELL YOU THAT MS. HOLMES PUT HIM IN TOUCH
16 WITH HER PARTNER, MR. BALWANI?

17 WELL, IT TELLS YOU JUST THAT, THAT THEY WERE PARTNERS ON
18 THIS SIDE OF THINGS BECAUSE YOU KNOW THAT IF INVESTORS HAD BEEN
19 TOLD THE TRUTH ABOUT THERANOS, IF INVESTORS WERE TOLD ABOUT THE
20 LIMITATIONS OF THE TECHNOLOGY, ABOUT THE ACCURACY PROBLEMS,
21 ABOUT WHAT THE EDISON COULDN'T DO, ABOUT THE COMPANY'S RELIANCE
22 ON THIRD PARTY DEVICES INSTEAD OF ITS OWN, IF INVESTORS KNEW
23 ALL OF THAT, I THINK IT'S FAIR FOR YOU TO INFER THAT THEY WOULD
24 HAVE BEEN FAR LESS INTERESTED IN INVESTING. THAT MEANS THAT
25 MILLIONS OF DOLLARS, MILLIONS AND MILLIONS OF DOLLARS RODE ON

12:13PM 1 INVESTORS RECEIVING THE SAME MESSAGE, THE SAME FRAUDULENT
12:13PM 2 MESSAGE FROM WHOEVER WAS PITCHING THEM FROM THERANOS.

12:13PM 3 SO BY ASSIGNING MR. BALWANI TO SPEAK TO MR. MENDENHALL,
12:13PM 4 MS. HOLMES WAS CONFIRMING THAT SHE HAD CONFIDENCE IN
12:13PM 5 MR. BALWANI TO DELIVER THOSE SAME FALSE STATEMENTS, THOSE SAME
12:13PM 6 MISLEADING REPRESENTATIONS THAT SHE HAD BEEN DELIVERING TO
12:13PM 7 INVESTORS.

12:13PM 8 IF SHE HADN'T BEEN CONFIDENT OF THAT, SHE WOULD HAVE
12:13PM 9 NEEDED TO HANDLE THIS CONVERSATION HERSELF, BECAUSE, AGAIN,
12:13PM 10 MILLIONS OF DOLLARS DEPENDED ON THIS INVESTOR HEARING THOSE
12:13PM 11 SAME LIES.

12:13PM 12 SURE ENOUGH, MR. BALWANI CAME THROUGH. AND THIS EMAIL
12:14PM 13 MEMORIALIZES THE STATEMENTS, THE CLAIMS THAT MR. MENDENHALL
12:14PM 14 HEARD FROM MR. BALWANI.

12:14PM 15 AND YOU SEE HERE THOSE CLAIMS INCLUDE THINGS LIKE THE
12:14PM 16 SCIENCE BEHIND THERANOS BEING COMPLETE; NO NEW SCIENCE NEEDED;
12:14PM 17 NO NEW INVENTION NEEDED.

12:14PM 18 IT GOES ON TO CLAIM -- OR MR. BALWANI WENT ON TO CLAIM
12:14PM 19 THAT THERANOS IS COMPLETELY VERTICALLY INTEGRATED, THEY OWN THE
12:14PM 20 LAB AND THE MANUFACTURING; 100 PERCENT MANUFACTURING IN THE
12:14PM 21 U.S.A., NO SUBCONTRACTING; IT SAYS FULLY OWNED AND PROTECTED
12:14PM 22 MANUFACTURING ASSURES PRICING AND PROFIT STABILITY.

12:14PM 23 THOSE POINTS, 6, 7, AND 8, BY THE WAY, I DON'T BELIEVE
12:14PM 24 THAT MR. COOPERSMITH ADDRESSED DURING HIS CLOSING.

12:14PM 25 DURING HIS CLOSING HE DID REVIEW THIS EMAIL WITH YOU, AND

12:14PM 1 HE PURPORTED TO EXPLAIN SOME OF THESE TO YOU. YOU HEARD FROM
12:14PM 2 THE WITNESS HIMSELF, MR. MENDENHALL, ABOUT THIS DOCUMENT, AND
12:14PM 3 THE CONVERSATION THAT LED TO IT.

12:14PM 4 AGAIN, I WOULD JUST REMIND YOU THAT WHAT IS EVIDENCE IS
12:15PM 5 THE SWORN TESTIMONY OF THE WITNESSES TESTIFYING ABOUT THEIR
12:15PM 6 FIRST HAND KNOWLEDGE. WHAT OTHER LAWYERS SAY OR WHAT ANY
12:15PM 7 LAWYER SAYS IN THIS CASE IS NOT EVIDENCE, SO PLEASE MAKE SURE
12:15PM 8 YOU'RE RELYING ON THE RIGHT SOURCES TO HELP YOU UNDERSTAND THIS
12:15PM 9 CONVERSATION.

12:15PM 10 WHEN IT COMES TO THOSE POINTS ABOUT THERANOS'S
12:15PM 11 MANUFACTURING, YOU KNOW THAT THE COMPANY WAS NOT MANUFACTURING
12:15PM 12 ALL OF ITS OWN DEVICES, THAT ITS OPERATIONS WERE NOT INTEGRATED
12:15PM 13 IN THAT WAY BECAUSE IT WAS, IN FACT, DEPENDENT UPON ITS ABILITY
12:15PM 14 TO GET ANALYZERS AND EQUIPMENT FROM OTHER COMPANIES IN ORDER TO
12:15PM 15 RUN THE MAJORITY OF ITS TESTS. SO THESE CLAIMS THAT
12:15PM 16 MR. BALWANI MADE ARE NOT TRUE.

12:15PM 17 YOU CAN UNDERSTAND WHY THEY WOULD BE MADE. IT'S MORE
12:15PM 18 IMPRESSIVE IF A COMPANY IS INTEGRATED IN THIS WAY, IT MAKES
12:15PM 19 THEM MORE SELF-SUFFICIENT, AND IT INCREASES THE VIEW OF THEIR
12:15PM 20 TECHNOLOGY BEING SOMETHING NOVEL AND IMPRESSIVE.

12:15PM 21 BUT WE KNOW THAT IS NOT TRUE, WHAT MR. BALWANI SAID.

12:15PM 22 ITEM 12 ON THAT LIST TALKS ABOUT CURRENT CLINICAL TRIALS
12:16PM 23 TAKING 6 VIALS OF BLOOD AND BEING ABLE TO RUN 10 TO 12 TESTS.
12:16PM 24 IT SAYS THERANOS TAKES 3 DROPS AND CAN RUN 60 TO 70 TESTS.

12:16PM 25 MR. COOPERSMITH SUGGESTED TO YOU THAT THAT WAS A TRUE

12:16PM 1 STATEMENT, TALKING ABOUT THE TOTAL NUMBER OF FINGERSTICK TESTS
12:16PM 2 THAT THERANOS COULD DO. THAT'S NOT WHAT THIS SAYS, THOUGH.
12:16PM 3 THIS IS TALKING ABOUT THE NUMBER OF TESTS THAT CAN BE PERFORMED
12:16PM 4 ON A SINGLE PATIENT SAMPLE, AND THAT'S CLEAR BASED ON THE FIRST
12:16PM 5 PART OF THAT BULLET. YOU SEE THE FIRST PART IS ABOUT CURRENT
12:16PM 6 CLINICAL TRIALS BEING ABLE TO RUN 10 TO 12 TESTS ON 6 VIALS OF
12:16PM 7 BLOOD. OBVIOUSLY CLINICAL TRIALS HAD THE ABILITY TO RUN MORE
12:16PM 8 THAN 10 TO 12 TESTS TOTALLY. EXISTING TECHNOLOGY COULD RUN
12:16PM 9 HUNDREDS OF TESTS AS YOU KNOW.

12:16PM 10 SO DOING AN APPLES-TO-APPLES COMPARISON HERE, WHAT THIS IS
12:16PM 11 A CLAIM ABOUT IS THAT THERANOS CAN RUN 60 TO 70 TESTS ON A
12:16PM 12 SINGLE SAMPLE OF BLOOD.

12:17PM 13 YOU CAN UNDERSTAND THE REASON WHY MR. BALWANI WOULD WANT
12:17PM 14 AN INVESTOR TO BELIEVE THAT.

12:17PM 15 MORE MISREPRESENTATIONS WHEN IT COMES TO THE FINANCIAL
12:17PM 16 STATUS OF THE COMPANY. THAT CLAIM THAT THE COMPANY COULD FUND
12:17PM 17 GROWTH THROUGH CURRENT OPERATIONS AND THEY HAD NO NEED FOR
12:17PM 18 CAPITAL. YOU KNOW THAT'S NOT CORRECT FROM SEEING THE FINANCIAL
12:17PM 19 RECORDS. YOU KNOW THAT THE COMPANY WAS GETTING MINIMAL REVENUE
12:17PM 20 AT THAT POINT, AND THAT IT WAS DEPENDENT ON INVESTORS FOR ITS
12:17PM 21 CONTINUED OPERATIONS.

12:17PM 22 YOU'LL RECALL THAT THIS EMAIL WAS ALSO FORWARDED TO
12:17PM 23 MR. EISENMAN WHO WAS AN INDICTED COUNT, SO PLEASE KEEP THAT IN
12:17PM 24 MIND WHEN YOU CONSIDER OR DELIBERATE ON THAT COUNT, THAT THIS
12:17PM 25 INFORMATION FROM MR. BALWANI DID FIND ITS WAY TO MR. EISENMAN

12:17PM 1 WHO WAS ABLE TO RELY ON IT IN MAKING HIS DECISION.

12:17PM 2 ALSO REMEMBER MR. BALWANI'S ROLE IN SPEAKING WITH
12:18PM 3 MR. EISENMAN ABOUT A 2014 REPORT THAT MR. EISENMAN SAW THAT HAD
12:18PM 4 SOME NEGATIVE INFORMATION ABOUT THERANOS, LIKE THE FACT THAT
12:18PM 5 THE LAB NEEDED TO TRANSPORT SAMPLES IN ORDER TO TEST THEM, AND
12:18PM 6 THE FACT THAT THE ANALYST WHO WROTE THAT REPORT WAS DOUBTFUL OR
12:18PM 7 SKEPTICAL THAT ALL OF THE TESTS COULD BE DONE ON THE SAME
12:18PM 8 DEVICE.

12:18PM 9 WHEN MR. EISENMAN ASKED MR. BALWANI ABOUT THAT, THE
12:18PM 10 RESPONSE HE GOT BACK FROM MR. BALWANI WAS SOUNDS LIKE AN
12:18PM 11 UNINFORMED CONSULTANT TO US. THAT WAS DENYING THE TRUTH OF THE
12:18PM 12 STATEMENTS IN THAT ANALYST REPORT. IN FACT, YOU KNOW THAT
12:18PM 13 THOSE STATEMENTS WERE TRUE. AND THAT'S EXHIBIT 2057 IF YOU
12:18PM 14 WOULD LIKE TO LOOK AT IT LATER. THAT WAS AN IMPORTANT CHANCE
12:18PM 15 FOR MR. BALWANI TO COME CLEAN AND BE HONEST ABOUT WHAT WAS
12:18PM 16 REALLY HAPPENING AT THERANOS. AND INSTEAD, HE DOUBLED DOWN AND
12:18PM 17 DENIED A TRUE REPORT TO SOMEONE WHO HAD PREVIOUSLY TRUSTED
12:19PM 18 THERANOS WITH HIS INVESTMENT MONEY.

12:19PM 19 SO WE'VE TALKED ABOUT HOW MR. BALWANI WAS INFLUENTIAL AT
12:19PM 20 THERANOS. HE WAS INFLUENTIAL OVER MS. HOLMES AS WELL.

12:19PM 21 WHAT KIND OF INFLUENCE WAS HE ON MS. HOLMES? LET'S LOOK
12:19PM 22 AT AN EXAMPLE OF THAT. THIS IS FROM OCTOBER OF 2015. AND
12:19PM 23 YOU'LL RECALL THAT AROUND MID-2015 AN ARTICLE CAME OUT IN "THE
12:19PM 24 WALL STREET JOURNAL" THAT WAS VERY NEGATIVE ABOUT THERANOS, AND
12:19PM 25 THERE WERE A LOT OF RIPPLE EFFECTS THAT HAPPENED AFTER THAT.

12:19PM 1 AND YOU SEE HERE A TEXT CHAIN BETWEEN MR. BALWANI AND
12:19PM 2 MS. HOLMES IN THE AFTERMATH OF THAT.

12:19PM 3 MR. BALWANI TALKS ABOUT WAG OR WALGREENS FREAKING OUT.
12:19PM 4 LACK OF TRANSPARENCY.

12:19PM 5 APPARENTLY WALGREENS WAS WONDERING WHY THEY FOUND ALL OF
12:19PM 6 THIS OUT THROUGH MEDIA AND NOT THROUGH US.

12:19PM 7 AND THEN YOU SEE THERE WAS A CALL WITH NIM, REFERENCING
12:20PM 8 NIMESH JHAVERI.

12:20PM 9 MR. BALWANI WRITES, "I TOLD THEM WE WERE SURPRISED BY THE
12:20PM 10 ARTICLE AS MUCH AS THEY R."

12:20PM 11 DO YOU SEE THAT IN THE ABOUT THE MIDDLE OF THE PAGE AT
12:20PM 12 7:29?

12:20PM 13 FIRST OF ALL, YOU KNOW THAT THAT WAS A LIE. WHEN
12:20PM 14 MR. BALWANI TOLD WALGREENS THAT THERANOS WAS AS SURPRISED BY
12:20PM 15 THE ARTICLE AS WALGREENS WAS, YOU KNEW FROM THIS VERY EXHIBIT
12:20PM 16 THAT THERANOS KNEW THIS NEGATIVE ARTICLE WAS COMING. YOU KNOW
12:20PM 17 THAT FOR A LONG PERIOD OF TIME BEFORE THE ARTICLE CAME OUT,
12:20PM 18 MR. BALWANI ESPECIALLY WAS INTENT ON TRYING TO FIGURE OUT WHAT
12:20PM 19 THE SOURCES WERE FOR THE ARTICLE AND IDENTIFY THOSE PEOPLE
12:20PM 20 WITHIN OR OUTSIDE OF THERANOS.

12:20PM 21 SO WHEN HE TOLD WALGREENS THAT THIS WAS A SURPRISE TO
12:20PM 22 THERANOS, THAT WAS NOT TRUE.

12:20PM 23 LOOK WHAT COMES AFTER THAT, THOUGH.

12:20PM 24 MS. HOLMES SUGGESTS A WAY TO RESPOND TO WALGREENS. SHE
12:20PM 25 SAYS, "LET'S SHOW THEM THAT THIS LITERALLY IS STILL UP IN AIR

12:20PM 1 SO WE LITERALLY JUST DECIDED SINCE THE DISCUSSION IS GETTING
12:21PM 2 AIRED OUT IN PRESS."

12:21PM 3 MR. BALWANI SAYS, "HOWEVER ISSUE IS WE DIDN'T TELL THEM IN
12:21PM 4 ADVANCE ABOUT SWITCHING." AND THIS IS TALKING ABOUT SWITCHING
12:21PM 5 USE AWAY FROM THE THERANOS NANOTAINER.

12:21PM 6 MS. HOLMES SAYS, "WE'LL HAVE TO PRESENT WELL THAT WE
12:21PM 7 HADN'T DECIDED TO."

12:21PM 8 MR. BALWANI SAYS, "BAD IDEA. AT THIS POINT THEY KNOW. SO
12:21PM 9 NEED TO BE TRANSPARENT."

12:21PM 10 THINK ABOUT THAT. THINK ABOUT THE REASON WHY MR. BALWANI
12:21PM 11 IN THIS CASE IS ADVISING MS. HOLMES TO BE TRANSPARENT. HE
12:21PM 12 SAYS, "AT THIS POINT THEY KNOW."

12:21PM 13 SO HE'S NOT SAYING BEING TRUTHFUL IS THE RIGHT THING TO
12:21PM 14 DO, SO THAT'S WHY WE SHOULD DO IT. HE'S NOT SAYING WE HAVE A
12:21PM 15 LEGAL OBLIGATION TO DEAL FAIRLY WITH OUR BUSINESS PARTNERS,
12:21PM 16 HE'S NOT SAYING THAT.

12:21PM 17 INSTEAD, HE'S ADVISING HIS PARTNER NOT TO BE UNTRUTHFUL IN
12:22PM 18 THIS CASE BECAUSE THEY WON'T GET AWAY WITH IT, BECAUSE AT THIS
12:22PM 19 POINT THE PARTY THAT THEY'RE GOING TO BE TALKING TO ALREADY
12:22PM 20 KNOWS THE TRUTH. THAT'S WHY THERE'S A NEED TO BE TRANSPARENT.

12:22PM 21 THIS ISN'T HONESTY, THIS IS STRATEGY.

12:22PM 22 NOW, THE DEFENSE CONSIDERS ALL OF THE TEXT MESSAGES IN
12:22PM 23 EVIDENCE IN THIS CASE AND SUGGESTS TO YOU THAT BECAUSE THESE
12:22PM 24 WERE PRIVATE TEXT MESSAGES BETWEEN THESE TWO INDIVIDUALS, THERE
12:22PM 25 SHOULD BE MORE OF A SMOKING GUN, THERE SHOULD BE SOMETHING MORE

12:22PM 1 EXPLICIT WHERE THEY'RE AGREEING TO COMMIT FRAUD OR ENTER INTO
12:22PM 2 THIS VENTURE TOGETHER.

12:22PM 3 I'D LIKE TO SHOW YOU ONE OF THE COURT'S INSTRUCTIONS THAT
12:22PM 4 ADDRESSES THAT ISSUE.

12:22PM 5 THESE ARE THE INSTRUCTIONS FOR THE CONSPIRACY OFFENSE FOR
12:22PM 6 WHICH MR. BALWANI IS CHARGED. AND NOTE THAT ABOUT HALF WAY
12:22PM 7 DOWN THAT PAGE THERE'S SOME LANGUAGE THAT SAYS, "FOR A
12:23PM 8 CONSPIRACY TO HAVE EXISTED, IT IS NOT NECESSARY THAT THE
12:23PM 9 CONSPIRATORS MAKE A FORMAL AGREEMENT OR THAT THEY AGREED ON
12:23PM 10 EVERY DETAIL OF THE CONSPIRACY."

12:23PM 11 AND AT THE BOTTOM IT SAYS, "ONE BECOMES A MEMBER OF A
12:23PM 12 CONSPIRACY BY WILLFULLY PARTICIPATING IN THE UNLAWFUL PLAN WITH
12:23PM 13 THE INTENT TO ADVANCE OR FURTHER SOME OBJECT OR PURPOSE OF THE
12:23PM 14 CONSPIRACY."

12:23PM 15 SO IT IS NOT REQUIRED IN ORDER FOR YOU TO FIND MR. BALWANI
12:23PM 16 GUILTY THAT THERE BE FORMAL LANGUAGE OR EVEN INFORMAL LANGUAGE
12:23PM 17 BETWEEN THE TWO COCONSPIRATORS AGREEING TO COMMIT THIS CRIME.

12:23PM 18 INSTEAD, YOU KNOW THIS CONSPIRACY EXISTED BY THE ACTIONS
12:23PM 19 TAKEN BY THE DEFENDANTS. IT IS THE ACTIONS IN FURTHERANCE OF
12:23PM 20 THE CONSPIRACY THAT PROVE ITS EXISTENCE.

12:23PM 21 AND HERE YOU DID SEE THAT THERE WERE SOME AREAS OF THE
12:23PM 22 COMPANY AND SOME AREAS OF THE FRAUD WHERE ONE MIGHT HAVE BEEN
12:23PM 23 MORE ACTIVE THAN THE OTHER. MS. HOLMES PROBABLY HAD MORE
12:23PM 24 CONVERSATIONS WITH INVESTORS. MR. BALWANI WAS MORE INVOLVED ON
12:23PM 25 THE LABORATORY SIDE.

1 BUT THE FACT THAT THEY DIVVIED UP RESPONSIBILITIES THAT
2 WAY IN THE OPERATION OF THE COMPANY AND IN THE FURTHERANCE OF
3 THESE FRAUDULENT SCHEMES, THAT DOESN'T PREVENT YOU FROM
4 CONVICTING ON THE CONSPIRACY COUNTS. IN FACT, IT PROVES THE
5 WAY THAT THEY COORDINATED TO ACCOMPLISH THESE ILLEGAL AIMS.

6 TO THE EXTENT THAT YOU BELIEVE THAT THERE WERE SOME
7 ASPECTS OF THE CRIMES HERE THAT MS. HOLMES COMMITTED WITHOUT
8 MR. BALWANI'S DIRECT PARTICIPATION, I WANT YOU TO KEEP IN MIND
9 THREE OF THE INSTRUCTIONS THAT I EXPECT YOU'LL RECEIVE FROM THE
10 COURT. AND ALL THREE OF THESE RELATE TO WAYS IN WHICH
11 MR. BALWANI IS -- CANNOT ESCAPE RESPONSIBILITY FOR THINGS THAT
12 HIS PARTNER DID.

13 SO, FOR EXAMPLE, IN JURY INSTRUCTION 19 YOU HEAR THAT EACH
14 MEMBER OF A CONSPIRACY IS RESPONSIBLE FOR THE FORESEEABLE
15 ACTIONS OF THE OTHER CONSPIRATORS PERFORMED DURING THE COURSE
16 AND IN FURTHERANCE OF THE CONSPIRACY. IF ONE MEMBER OF A
17 CONSPIRACY COMMIT A CRIME IN FURTHERANCE OF A CONSPIRACY, THE
18 OTHER MEMBERS HAVE ALSO, UNDER THE LAW, COMMITTED THAT CRIME.

19 AND I WANT YOU TO REVIEW THESE INSTRUCTIONS IN FULL IF
20 THEY BECOME RELEVANT TO YOUR DELIBERATIONS, BUT FOR RIGHT NOW
21 I'LL JUST HIGHLIGHT SOME OF THE KEY LANGUAGE.

22 UNDER AIDING AND ABETTING, NOTE THAT MR. BALWANI MAY BE
23 FOUND GUILTY OF WIRE FRAUD IT AS CHARGES IN COUNTS THREE
24 THROUGH TWELVE EVEN IF HE PERSONALLY DID NOT COMMIT THE ACT OR
25 ACTS CONSTITUTED IN THE CRIME BUT AIDED AND ABETTED IN ITS

COMMISSION. IN OTHER WORDS, IF HE INTENTIONALLY HELPED SOMEONE LIKE MS. HOLMES TO COMMIT A CRIME. AND THERE ARE ELEMENTS PROVIDED FOR THAT.

ANOTHER INSTRUCTION WILL TELL YOU THAT IF YOU FIND THAT MR. BALWANI WAS A MEMBER OF A SCHEME TO DEFRAUD INVESTORS AND THAT HE HAD THE INTENT TO DEFRAUD INVESTORS, HE MAY BE RESPONSIBLE FOR OTHER CO-SCHEMERS' ACTIONS, FOR EXAMPLE, MS. HOLMES'S ACTIONS, DURING THE COURSE OF AND IN FURTHERANCE OF THE ALLEGED SCHEME, EVEN IF MR. BALWANI DID NOT KNOW WHAT THEY SAID OR DID.

AND A SIMILAR INSTRUCTION EXISTS ON THE PATIENT SIDE OF THINGS. SO PLEASE KEEP THOSE IN MIND. THAT'S 19, 24, AND 25.

I'D LIKE TO SWITCH GEARS AND TALK ABOUT SOMETHING THAT THE DEFENSE HAS EMPHASIZED A LOT DURING THE TRIAL, AND THAT IS THE FACT THAT THERE IS NO EVIDENCE BEFORE YOU RELATING TO THE CONTENT OF THE THERANOS LIS DATABASE OR AT LEAST THAT CONTENT ITSELF IS NOT IN EVIDENCE.

THE DEFENSE WANTS THIS TO BE IMPORTANT TO YOU. AND THIS IS CONSISTENT WITH A PATTERN IN THE DEFENSE'S ARGUMENT THAT THEIR FAVORITE EVIDENCE, WHETHER IT'S THEIR FAVORITE DOCUMENT OR RECORDING IS THE DOCUMENT THAT IS NOT PRESENT, THEIR FAVORITE WITNESS, THE WITNESS THAT THEY SAY IS THE MOST IMPORTANT TO YOUR CONSIDERATION IN THE CASE IS THE WITNESS WHO DID NOT TESTIFY.

WHEN TESTIMONY OR EVIDENCE IS NOT AVAILABLE TO YOU, THE

12:27PM 1 DEFENSE IS ABLE TO INVITE YOU TO SPECULATE ABOUT WHAT IT MIGHT
12:27PM 2 SAY. IT'S IMPORTANT TO THE PROCESS AND TO YOUR DELIBERATIONS
12:27PM 3 THAT YOU FOCUS ON WHAT ACTUALLY IS IN EVIDENCE AND NOT
12:27PM 4 SPECULATE ABOUT THINGS THAT ARE NOT BEFORE YOU. THAT'S
12:27PM 5 ESPECIALLY TRUE WHEN IT COMES TO WITNESSES WHO DID NOT TESTIFY.
12:27PM 6 THROUGHOUT THE DEFENSE'S CLOSING THEY TALKED ABOUT WITNESSES
12:27PM 7 FROM WHOM YOU DIDN'T HEAR AND THEY LISTED MANY, MANY OF THOSE
12:27PM 8 INDIVIDUALS, WHILE AT THE SAME TIME TALKED ABOUT HOW LONG THIS
12:27PM 9 TRIAL HAD BEEN.

12:27PM 10 IMAGINE HOW LONG THE TRIAL WOULD HAVE BEEN HAD THE
12:27PM 11 GOVERNMENT CALLED AS A WITNESS EVERY PERSON THE DEFENSE
12:27PM 12 MENTIONED IN ITS CLOSING ARGUMENT.

12:28PM 13 THERE'S A RELEVANT INSTRUCTION ON THIS ISSUE AS WELL
12:28PM 14 RELATING TO WHAT REASONABLE DOUBT MEANS. NOTE HERE THE SECOND
12:28PM 15 SENTENCE OF THIS INSTRUCTION TELLS YOU THAT IT IS NOT REQUIRED
12:28PM 16 THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

12:28PM 17 KEEP IN MIND THE GOVERNMENT IS REQUIRED TO PROVIDE
12:28PM 18 SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION. THE GOVERNMENT
12:28PM 19 IS NOT REQUIRED TO PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

12:28PM 20 WHEN IT COMES TO THE LIS SPECIFICALLY, THE SUGGESTION IS
12:28PM 21 THAT IT'S IMPORTANT AND IT'S THE GOVERNMENT'S FAULT THAT WE
12:28PM 22 DON'T HAVE ACCESS TO THE LIS DATABASE.

12:28PM 23 THE EVIDENCE SUGGESTS OTHERWISE.

12:28PM 24 FIRST, YOU SAW EVIDENCE THAT THE GOVERNMENT TRIED TO
12:28PM 25 OBTAIN THE LIS FOR MONTHS. THIS IS A SUBPOENA FROM APRIL OF

12:28PM 1 2018 SENT TO THERANOS. THIS IS EXHIBIT 5916. AND THIS
12:28PM 2 REQUESTS ALL OF THE LABORATORY REPORTS FROM THAT DATABASE, SO
12:29PM 3 YOU KNOW THE GOVERNMENT WAS REQUESTING THIS INFORMATION FROM
12:29PM 4 THERANOS, THE COMPANY.

12:29PM 5 YOU ALSO KNOW THAT IN LATE AUGUST OF 2018, AROUND THE TIME
12:29PM 6 THAT THE GOVERNMENT RECEIVED FROM THERANOS WHAT IT WAS TOLD WAS
12:29PM 7 A COPY OF THAT DATABASE, THE COMPANY WAS PLANNING TO PUT THE
12:29PM 8 SYSTEM INTO STORAGE AROUND THAT SAME TIME, AND THE COMPANY KNEW
12:29PM 9 THAT THE DATABASE MAY THEREAFTER BE VERY DIFFICULT TO
12:29PM 10 RESUSCITATE.

12:29PM 11 SO NO EVIDENCE THAT THE GOVERNMENT KNEW THAT WAS
12:29PM 12 HAPPENING, BUT IT IS ESTABLISHED THAT THE COMPANY ITSELF KNEW
12:29PM 13 THAT THAT WAS HAPPENING.

12:29PM 14 YOU ALSO KNOW THAT THE GOVERNMENT MADE CONTINUED EFFORTS
12:29PM 15 AFTER IT RECEIVED ITS COPY OF THE LIS THAT WAS INACCESSIBLE, TO
12:29PM 16 SALVAGE THAT INFORMATION OR OBTAIN A WORKING COPY.

12:29PM 17 HERE YOU SEE FROM MARCH OF 2019, SO MONTHS LATER, THIS
12:29PM 18 CONVERSATION IS STILL ONGOING WITH THE ASSIGNEE WHO HAS
12:29PM 19 INHERITED ALL OF THE ASSETS FROM THERANOS AFTER IT WENT OUT OF
12:30PM 20 BUSINESS.

12:30PM 21 AND HERE YOU HAVE THE GOVERNMENT BEING TOLD BY THE
12:30PM 22 ASSIGNEE THAT THE ASSIGNEE DOESN'T KNOW WHO DECOMMISSIONED THE
12:30PM 23 LIS.

12:30PM 24 YOU HAVE THE GOVERNMENT BEING TOLD THAT THE LIS DATABASE
12:30PM 25 WAS NOT INCLUDED IN THE MIGRATION OF THE CORPORATE SERVER

EQUIPMENT OUT OF THE THERANOS FACILITY.

AGAIN, YOU HAVE THE GOVERNMENT BEING TOLD THAT THERANOS IS UNDERSTANDING, THERANOS ITSELF, ITS UNDERSTANDING THAT THE DATABASE COULD NO LONGER BE RECONSTRUCTED WITH THE EXISTING RESOURCES.

THAT BRINGS US TO THE TESTIMONY OF RICHARD SONNIER WHO WAS AN EXPERT IN SQL DATABASES BUT NOT THIS PARTICULAR DATABASE.

YOU'LL RECALL THAT HE DIDN'T HAVE ANY FIRST HAND KNOWLEDGE OR EXPERIENCE WITH THE ACTUAL THERANOS LIS. HE'S TESTIFYING ABOUT THE MICROSOFT PRODUCT IN GENERAL.

YOU ALSO HEARD THAT THIS WAS A BESPOKE DATABASE.

YOU HEARD DURING CROSS THAT MR. SONNIER, IN WORKING FOR THE DEFENSE FOR WHICH HE WAS COMPENSATED, REACHED AN OPINION THAT THE THERANOS LIS COULD HAVE BEEN RESTORED IF THE GOVERNMENT HAD OBTAINED THE ORIGINAL HARDWARE THAT THE DATABASE WAS RUN ON.

AGAIN, DESPITE THE FACT THAT MR. SONNIER HAD NEVER ACTUALLY TOUCHED THIS DATABASE, AND DESPITE THE FACT THAT IN REACHING THAT OPINION HE IGNORED CONTRARY INFORMATION THAT HE WAS AWARE FROM PEOPLE WHO ACTUALLY HAD WORKED AT THE COMPANY AND HAD HANDLED THAT DATABASE.

BY THE WAY, YOU RECALL THAT HE ALSO CLAIMED DURING HIS TESTIMONY THAT BESIDES RESTORING THE DATABASE FROM THE ORIGINAL HARDWARE, IT ALSO WOULD HAVE WORKED IF THE GOVERNMENT HAD HIRED A VENDOR.

12:31PM 1 THAT TESTIMONY DOESN'T MAKE ANY SENSE GIVEN THAT
12:31PM 2 MR. SONNIER HIMSELF, A VENDOR HIRED BY THE DEFENSE, HAD ACCESS
12:31PM 3 TO A COPY OF THE LIS DATABASE AND WAS UNABLE TO ACCESS THE
12:32PM 4 DATABASE JUST LIKE THE GOVERNMENT WAS.

12:32PM 5 SO THERE ARE REASONS TO DISBELIEVE MR. SONNIER'S TESTIMONY
12:32PM 6 AND CERTAINLY REASONS TO QUESTION WHETHER IT'S RELEVANT IN THIS
12:32PM 7 CASE.

12:32PM 8 IT'S HELPFUL TO THE DEFENSE HERE TO ARGUE THAT THE LIS
12:32PM 9 WOULD BE PIVOTAL IN DETERMINING WHETHER THERE WERE ACCURACY OR
12:32PM 10 RELIABILITY PROBLEMS AT THERANOS, BUT THE TRUTH IS THAT IT MAY
12:32PM 11 NOT HAVE MADE A DIFFERENCE.

12:32PM 12 YOU HEARD TESTIMONY FROM DR. ROSENDORFF ABOUT HOW HE AS
12:32PM 13 LAB DIRECTOR AND A PATHOLOGIST EVALUATES TEST ACCURACY. SO IF
12:32PM 14 HE'S PRESENTED WITH A TEST RESULT AND HE'S TRYING TO FIGURE OUT
12:32PM 15 WHETHER IT'S ACCURATE OR NOT, HE DOES THINGS LIKE LOOK INTO THE
12:32PM 16 PATIENT'S OTHER SYMPTOMS AND PRESENTATION FACTORS, FOR EXAMPLE,
12:32PM 17 WHETHER SOMEONE MIGHT HAVE AN OVERACTIVE THYROID HE SAID. HE
12:32PM 18 CONFIRMED FOR YOU THAT INFORMATION LIKE THAT WOULD NOT BE
12:32PM 19 PRESENT IN THE LIS DATABASE.

12:32PM 20 HE SAID HE MIGHT ALSO LOOK AT CONTEMPORANEOUS TESTS FROM
12:33PM 21 OTHER LABS TO SEE IF, FOR EXAMPLE, OTHER LABS ARE DISAGREEING
12:33PM 22 WITH THERANOS ON WHAT THE TRUE VALUES FOR A CERTAIN TEST ARE.

12:33PM 23 HE CONFIRMED FOR YOU THAT INFORMATION LIKE THAT WOULD NOT
12:33PM 24 BE PRESENT IN THE THERANOS LIS.

12:33PM 25 HE CONFIRMED DIRECTLY THAT IT WAS NOT POSSIBLE TO LOOK AT

1 INDIVIDUAL RESULTS IN THE LIS LABORATORY SYSTEM AND DETERMINE
2 WHETHER THEY'RE ACCURATE OR NOT.

3 SO FAR THE DEFENSE SAYS WE NEED THIS INFORMATION, AND THEY
4 TALK ABOUT THE ABILITY TO RUN SOME KIND OF STATISTICAL
5 ANALYSIS. THEY SPEAK ABOUT THAT IN PRETTY VAGUE TERMS. IT'S
6 UNCLEAR EXACTLY WHAT KIND OF ANALYSIS THEY THINK WOULD BE
7 POSSIBLE, BUT THIS IS ALL HYPOTHETICAL. AND AGAIN, IT'S
8 CONTRARY TO TESTIMONY FROM THE ACTUAL EXPERTS WHO KNOW ABOUT
9 HOW TO EVALUATE THE ACCURACY OF THE LAB TEST RESULT.

10 SO THE LABORATORY INFORMATION SYSTEM IS CERTAINLY A
11 QUESTION MARK BECAUSE WE DON'T HAVE IT. LIKELY, THOUGH, IT
12 WOULD STILL BE A QUESTION MARK IF WE DID, IS BECAUSE IT'S
13 UNCLEAR HOW, IF AT ALL, WE WOULD BE ABLE TO USE THAT AND
14 DETERMINE THE OVERALL ACCURACY OR INACCURACY RATE AT THERANOS.

15 TO THE EXTENT THAT THAT DATABASE WOULD SHED MORE LIGHT ON
16 THERANOS TEST ACCURACY, THOUGH, IS THERE ANY REASON FOR YOU TO
17 BELIEVE THAT IT WOULD MAKE THERANOS LOOK BETTER?

18 THINK ABOUT ALL OF THE PROBLEMS THAT YOU'VE SEEN IN
19 INTERNAL CORRESPONDENCE, RECORDS OF THE COMPANY, THINK ABOUT
20 THINGS THAT WITNESSES HAVE TOLD YOU, WITNESSES WHO ACTUALLY
21 WORKED WITH THIS TECHNOLOGY AND SAW THE RESULTS THAT IT
22 PRODUCED, THINK ABOUT THE CMS FINDINGS BASED ON A HOLISTIC LOOK
23 AT THE THERANOS LAB, THINK ABOUT HOW SARAH BENNETT CALLED THE
24 PROBLEMS THAT SHE SAW AT THE THERANOS LAB SYSTEMIC.

25 CMS ALSO NOTED THAT THERANOS ADMITTED FOLLOWING THE CMS

12:34PM 1 INSPECTION THAT THERE WAS A POSSIBLE PATIENT IMPACT FOR EVERY
12:34PM 2 TEST REPORTED FROM THE LABORATORY'S TPS 3.5 INSTRUMENT. THAT'S
12:35PM 3 THE EDISON.

12:35PM 4 SO IS IT REALLY IN DISPUTE THAT THERE WERE SERIOUS
12:35PM 5 ACCURACY AND RELIABILITY PROBLEMS AT THERANOS OR HAS THAT FACT
12:35PM 6 ALREADY BEEN ESTABLISHED? IS THERE ANY CHANCE THAT MORE DATA
12:35PM 7 WOULD SIGNIFICANTLY CHANGE THE PICTURE, ESPECIALLY WHEN THAT
12:35PM 8 DATA DOESN'T INCLUDE THE KINDS OF FACTS NECESSARY TO EVALUATE
12:35PM 9 INDIVIDUAL RESULTS?

12:35PM 10 THE DEFENSE HAS CALLED THIS A SCIENTIFIC FRAUD CASE
12:35PM 11 MULTIPLE TIMES. YOU SHOULD KNOW THAT'S NOT A LEGAL TERM.

12:35PM 12 THE DEFENSE POINT SEEMS TO BE THAT THERE SHOULD BE A
12:35PM 13 HEIGHTENED STANDARD OF PROOF IN CASES LIKE THIS INVOLVING
12:35PM 14 SCIENTIFIC SUBJECT MATTER. THAT'S NOT THE LAW.

12:35PM 15 YOU'RE ABOUT TO HEAR INSTRUCTIONS ON THE LAW FROM THE
12:35PM 16 COURT, AND THERE WON'T BE ANYTHING TO THAT EFFECT.

12:35PM 17 THIS IS A WIRE FRAUD AND CONSPIRACY CASE AND THE STANDARDS
12:35PM 18 WILL COME FROM THE COURT. YOU WON'T HEAR ANYTHING ABOUT
12:35PM 19 SPECIAL REQUIREMENTS FOR PROVING FRAUD IN A CASE INVOLVING THIS
12:35PM 20 SUBJECT MATTER.

12:35PM 21 IT IS CERTAINLY NOT RELEVANT TO YOUR DECISION WHAT KINDS
12:36PM 22 OF MATERIALS THERANOS SUBMITTED TO THE FDA TO GET CLEARANCE FOR
12:36PM 23 ITS HERPES TEST IN 2015.

12:36PM 24 WHAT THE INSTRUCTIONS WILL FOCUS ON IS THE DEFENDANT'S
12:36PM 25 STATE OF MIND AND THE NEED TO DETERMINE WHETHER HE KNEW HIS

12:36PM 1 STATEMENTS WERE FALSE AND MISLEADING AND WHETHER HE MADE THOSE
12:36PM 2 STATEMENTS WITH THE INTENT TO DEFRAUD.

12:36PM 3 THE RELEVANT EVIDENCE IS THE EVIDENCE THAT SHOWS THAT AND
12:36PM 4 THERE'S A LOT OF IT.

12:36PM 5 AND THE EVIDENCE SHOWED YOU THE SAME THING THAT IT SHOWED
12:36PM 6 MR. BALWANI, SO YOU KNOW ABOUT THE ACCURACY AND RELIABILITY
12:36PM 7 PROBLEMS AT THERANOS THE SAME WAY HE KNEW BECAUSE YOU KNOW
12:36PM 8 ABOUT THE QUALITY CONTROL PROBLEMS, YOU KNOW ABOUT THE NEGATIVE
12:36PM 9 REPORTS FROM EMPLOYEES AND WHAT THEY SAW, YOU KNOW ABOUT THE
12:36PM 10 INACCURATE RESULTS.

12:36PM 11 I'M GOING TO TALK BRIEFLY ABOUT SOME OF THE INDIVIDUAL
12:36PM 12 CHARGED COUNTS, AND THEN I'LL CONCLUDE MY REMARKS.

12:37PM 13 FIRST, LET'S HIGHLIGHT SOME OF THE KEY LANGUAGE IN THE
12:37PM 14 WIRE FRAUD INSTRUCTIONS. SO YOU'LL BE ASKED TO RENDER VERDICTS
12:37PM 15 ON TWO CONSPIRACY COUNTS AND A NUMBER OF INDIVIDUAL WIRE FRAUD
12:37PM 16 COUNTS. FOR THOSE WIRE FRAUD COUNTS, I'D LIKE YOU TO NOTE A
12:37PM 17 FEW THINGS.

12:37PM 18 FIRST, FOR WIRE FRAUD, DECEITFUL STATEMENTS OF HALF-TRUTHS
12:37PM 19 MAY CONSTITUTE FALSE OR FRAUDULENT REPRESENTATIONS.

12:37PM 20 SO WHEN YOU THINK ABOUT THE THINGS THAT MR. BALWANI AND
12:37PM 21 MS. HOLMES SAID TO VICTIMS, DON'T JUST LOOK FOR BLACK AND WHITE
12:37PM 22 LIES. LOOK FOR DECEITFUL STATEMENTS OF HALF-TRUTHS AS WELL,
12:37PM 23 THINGS DELIVERED IN A WAY WHERE THEY WERE INTENDING TO BE
12:37PM 24 MISLEADING, EVEN IF THEY MIGHT BE DIFFICULT TO IDENTIFY AS A
12:37PM 25 BLACK AND WHITE LIE.

12:37PM 1 NOTE ALSO THAT A STATEMENT IS MATERIAL IF IT HAS A NATURAL
12:37PM 2 TENDENCY TO INFLUENCE OR IS CAPABLE OF INFLUENCING A PERSON TO
12:37PM 3 PART WITH MONEY OR PROPERTY.

12:37PM 4 I THINK IT'S EASY TO CONCLUDE THAT ALL OF THE KINDS OF
12:38PM 5 STATEMENTS THAT WE'RE TALKING ABOUT IN THIS CASE FALL INTO THAT
12:38PM 6 CATEGORY.

12:38PM 7 NOTE ALSO THAT THE WIRE ITSELF, AND WE'RE GOING TO TALK
12:38PM 8 ABOUT THE KINDS OF WIRES THAT ARE INVOLVED IN THIS CASE, BUT
12:38PM 9 THE WIRE ITSELF NEED NOT BE FALSE OR MISLEADING. THAT'S GOING
12:38PM 10 TO BE IMPORTANT FOR A COUPLE OF THESE.

12:38PM 11 FINALLY NOTE THAT IN ORDER FOR A WIRE TO SERVE AS A BASIS
12:38PM 12 FOR A WIRE FRAUD COUNT, IT MUST HAVE BEEN REASONABLY
12:38PM 13 FORESEEABLE TO THE DEFENDANT THAT SOME WIRE COMMUNICATION WOULD
12:38PM 14 OCCUR IN FURTHERANCE OF THE SCHEME AND AN INTERSTATE WIRE
12:38PM 15 COMMUNICATION MUST HAVE ACTUALLY OCCURRED IN FURTHERANCE OF THE
12:38PM 16 SCHEME.

12:38PM 17 SO LET'S TALK ABOUT COUNT NINE, WHICH IS BASED ON A
12:38PM 18 TELEPHONE CALL THAT A PATIENT NAMED BRENT BINGHAM MADE TO
12:38PM 19 THERANOS AFTER HE GOT INACCURATE TEST RESULTS.

12:38PM 20 FIRST, WHEN IT COMES TO THE TEST ITSELF, THE DEFENSE
12:39PM 21 CLAIMS THAT THIS TEST WAS NOT PERFORMED ON THERANOS EQUIPMENT.
12:39PM 22 I THINK IT'S UP TO YOU TO JUDGE THE EVIDENCE ON THAT AND
12:39PM 23 WHETHER THE EVIDENCE CLEARLY SHOWS THAT. I WILL POINT OUT THAT
12:39PM 24 THE LABORATORY REPORT ITSELF INDICATES THAT ALL OF THE TESTS
12:39PM 25 WERE PERFORMED AT THERANOS LABS IN NEWARK, CALIFORNIA.

12:39PM 1 AND YOU KNOW FROM MR. BINGHAM'S TESTIMONY THAT HE WAS
12:39PM 2 LOCATED IN PHOENIX WHERE THERANOS ALSO HAD A LAB. SO YOU MIGHT
12:39PM 3 ASK WHY HIS SAMPLE WOULD HAVE BEEN SENT FROM ARIZONA TO
12:39PM 4 CALIFORNIA IF ALL OF THOSE TESTS COULD HAVE BEEN RUN IN THE
12:39PM 5 ARIZONA LAB.

12:39PM 6 YOU KNOW FROM MS. BENNETT'S TESTIMONY THAT THE ARIZONA LAB
12:39PM 7 WAS NOT A LAB THAT COULD RUN LABORATORY DEVELOPED TESTS OR
12:39PM 8 LDT'S. THAT MEANS THAT THE TESTS DONE IN ARIZONA WERE ALL DONE
12:39PM 9 AND THE SAME THAT ANY OTHER LAB WOULD DO THEM, ON FDA APPROVED
12:39PM 10 DEVICES, NOT THERANOS-SPECIFIC DEVICES. ALL OF THE THERANOS
12:40PM 11 SPECIFIC DEVICES USED BY THE COMPANY WERE IN NEWARK, WHERE
12:40PM 12 MR. BINGHAM'S TEST WAS RUN.

12:40PM 13 WHEN IT COMES TO THE WIRE ITSELF, REMEMBER THAT
12:40PM 14 MR. BINGHAM PLACED A PHONE CALL TO THERANOS TO ASK ABOUT HIS
12:40PM 15 INACCURATE RESULT.

12:40PM 16 AND MR. EDLIN TESTIFIED THAT THE CUSTOMER SERVICE PEOPLE
12:40PM 17 WHO WERE DESIGNATED TO RECEIVE CALLS FROM PATIENTS OR DOCTORS
12:40PM 18 ABOUT INACCURATE RESULTS WERE IN PALO ALTO.

12:40PM 19 SO THE DEFENSE INVITES YOU TO SPECULATE ABOUT WHETHER THAT
12:40PM 20 CALL MIGHT HAVE BEEN TO ANOTHER LOCATION, BUT THERE'S NO
12:40PM 21 EVIDENCE SUGGESTING THAT. AND YOU'LL RECALL FROM THE
12:40PM 22 INSTRUCTION ON REASONABLE DOUBT, THAT REASONABLE DOUBT IS NOT
12:40PM 23 SOMETHING BASED ON SPECULATION.

12:40PM 24 SO HOW DO YOU KNOW THAT THIS WIRE -- THIS PHONE CALL WAS
12:40PM 25 USED TO CARRY OUT AN ESSENTIAL PART IN THIS SCHEME TO DEFRAUD

12:40PM 1 PATIENTS? HOW DO YOU KNOW THAT IT OCCURRED IN FURTHERANCE OF
12:41PM 2 THAT SCHEME AS THE ELEMENTS REQUIRE?

12:41PM 3 WELL, I'D LIKE TO SHOW YOU JUST TWO SELECTIONS FROM
12:41PM 4 EXHIBIT 4520, WHICH IS A LOG INTERNAL AT THERANOS OF CALLS
12:41PM 5 RECEIVED FROM PATIENTS AND DOCTORS. I'D LIKE TO SHOW YOU TWO
12:41PM 6 EXAMPLES OF HOW THE DEFENDANT AND THERANOS USED THIS CUSTOMER
12:41PM 7 SERVICE GROUP TO FURTHER THE FRAUD AGAINST PATIENTS.

12:41PM 8 LET'S START WITH THIS EXAMPLE. YOU SEE THIS BEGINS WITH A
12:41PM 9 CALL FROM A DOCTOR'S OFFICE ABOUT TWO PATIENTS WITH ELECTROLYTE
12:41PM 10 CONCERNS. IN THE BOTTOM THERE'S A NOTE THAT SAYS, "PER SUNNY,
12:41PM 11 WE HAVE FIXED ANY ISSUES WITH THESE REFERENCE RANGES,
12:41PM 12 ET CETERA, SO GENNA CAN ASSURE HIM AND GIVE HIM TWO TO FOUR
12:41PM 13 COUPONS SO HE CAN TEST US OUT."

12:41PM 14 SO YOU SEE HERE AN EXAMPLE OF THE FUNCTION OF THE CUSTOMER
12:42PM 15 SERVICE GROUP. WHEN DOCTORS OR PATIENTS CALLED WITH QUESTIONS
12:42PM 16 OR CONCERNS ABOUT INACCURATE TEST RESULTS, THE CUSTOMER SERVICE
12:42PM 17 GROUP WAS TO ASSUAGE THEIR CONCERNS, PRESERVE THAT RELATIONSHIP
12:42PM 18 WITH THAT PATIENT OR DOCTOR, AND KEEP THEM COMING BACK TO
12:42PM 19 THERANOS FOR MORE.

12:42PM 20 LET'S SEE A DIFFERENT EXAMPLE. THIS INTERACTION BEGAN
12:42PM 21 WITH A CALL REGARDING A PATIENT'S HBA1C RESULT AS INDICATED
12:42PM 22 HERE. NOTE THE RESPONSE HERE. IT INDICATES THAT SOMEONE NAMED
12:42PM 23 TAJUAN ASSURED THIS DOCTOR THAT ALL WERE WITHIN RANGE. AND IT
12:42PM 24 SAYS, "I BELIEVE OUR RESULTS TO BE ACCURATE AFTER ALL THREE
12:42PM 25 RUNS WERE VERY CLOSE."

1 SKIP DOWN A COUPLE OF LINES AND NOTE WHAT IT SAYS THERE.

2 IT SAYS, "WHEN I TALK TO PHYSICIANS OR GUESTS, I TRY TO OFFER
3 THEM DIFFERENT VARIABLES OR SCENARIOS TO CONSIDER WHEN THEY
4 QUESTION OUR RESULTS. OF COURSE NONE OF THEM HAVE TO DO WITH
5 OUR TESTING METHODS. I MENTIONED THAT THE GUEST'S DIET
6 POSSIBLY CHANGED WITHIN THE LAST FEW MONTHS, THAT THE GUEST MAY
7 NOT BE TAKING THE MEDICATION AS PRESCRIBED, ET CETERA. I
8 BELIEVE THAT WHEN I DO THAT THE DOC/GUEST FEEL AS THOUGH I AM
9 CONCERNED AND I AM ALSO TRYING TO BE A PART OF THE SOLUTION."

10 SO ANOTHER PERFECT EXAMPLE OF WHY THERANOS HAD A CUSTOMER
11 SERVICE GROUP. THESE ARE PEOPLE WHO WOULD HAVE A DIFFICULT JOB
12 AT A LAB LIKE THIS THAT WAS HAVING SO MANY ACCURACY PROBLEMS,
13 BUT IT WAS ESSENTIAL FOR THE FURTHERANCE OF THE SCHEME TO
14 DEFRAUD PATIENTS THAT THERE BE PEOPLE AVAILABLE WHO WOULD
15 SMOOTH THINGS OVER WITH PATIENTS AND DOCTORS WHEN PROBLEMS
16 AROSE, AND THE EVIDENCE SHOWS THAT THEY DID A GOOD JOB OF THAT.

17 LET'S TALK BRIEFLY ABOUT COUNT TEN, WHICH IS
18 ERIN TOMPKINS'S HIV RESULTS. IT'S UNCLEAR FROM THE DEFENSE'S
19 ARGUMENT WHETHER THEY CONCEDE THAT MS. TOMPKINS ACTUALLY GOT
20 INACCURATE RESULTS FOR HER HIV TEST. THE FACT REMAINS THAT THE
21 THERANOS TEST INDICATED THAT SHE WAS REACTIVE FOR HIV-1 AND 2
22 ANTIBODIES WHEN IN FACT SHE WASN'T. SHE HAD NEVER BEEN
23 INFECTED WITH HIV, THERE WAS NOTHING ELSE IN HER HISTORY TO
24 SUGGEST THAT SHE HAD THAT INFECTION, AND SHE SUBSEQUENTLY
25 TESTED NEGATIVE.

1 SO I THINK THE DEFENSE WANTS TO HIGHLIGHT THE FACT THAT
2 SOME OF THE HIV TESTS OR THE COMPONENTS OF THE HIV TEST IN
3 MS. TOMPKINS'S LAB REPORT DID COME BACK NEGATIVE, BUT THE ONE
4 THAT SAYS POSITIVE IS ACTUALLY INCONSISTENT WITH THE ONES THAT
5 SAY NEGATIVE. SO IT'S IMPOSSIBLE THAT ALL OF THOSE RESULTS
6 COULD BE CORRECT AT THE SAME TIME. THIS IS AN EXAMPLE OF AN
7 INACCURATE RESULT PUT OUT BY THERANOS.

8 WHEN IT COMES TO COUNT TEN AND ELEVEN, THE DEFENSE ALSO
9 INVITES YOU TO SPECULATE ABOUT THE INTERSTATE NATURE OF THIS
10 WIRE COMMUNICATION.

11 AGAIN, REASONABLE DOUBT IS NOT BASED ON SPECULATION. THIS
12 DOCUMENT ON ITS FACE, JUST LIKE THE ONE FOR COUNT ELEVEN,
13 INDICATES THAT IT WAS SENT FROM THE THERANOS FAX SERVER AND
14 THERANOS'S FAX NUMBER IS 650 IN CALIFORNIA, AND SO IF IT WAS
15 SENT TO PHOENIX, IT MUST HAVE NECESSARILY CROSSED STATE LINES.
16 IT DOESN'T NEED TO BE MORE COMPLICATED THAN THAT.

17 FINALLY, THE FACT THAT MS. TOMPKINS'S HIV TEST WAS
18 PERFORMED ON NON-THERANOS EQUIPMENT IS NOT A REASON TO FIND NOT
19 GUILTY ON THIS COUNT. THIS IS STILL A WIRE COMMUNICATION IN
20 FURTHERANCE OF THE SCHEME TO DEFRAUD PATIENTS, AND IT'S TRUE
21 FOR TWO REASONS.

22 FIRST, YOU'LL RECALL THAT THE EVIDENCE SHOWS THAT PATIENTS
23 WERE PROMISED TESTS WITH SUPERIOR ACCURACY. THAT APPEARS IN
24 PUBLIC INFORMATION THAT THE COMPANY KNEW ABOUT AND PROMOTED.

25 INSTEAD, WHAT PATIENTS GOT WERE TESTS OF INFERIOR ACCURACY

12:46PM 1 OR AT BEST THE SAME LEVEL OF ACCURACY THAT WOULD HAVE BEEN
12:46PM 2 PROVIDED AT ANY OTHER LAB. THAT'S NOT LIVING UP TO THE PROMISE
12:46PM 3 THAT THE COMPANY MADE THE PATIENTS.

12:46PM 4 SO THIS IS AN EXAMPLE OF A BROKEN PROMISE TO THIS
12:46PM 5 PARTICULAR PATIENT.

12:46PM 6 DON'T FORGET ALSO THAT IN ADDITION TO HER HIV TEST, SHE
12:46PM 7 DID GET OTHER TESTS THAT WERE RUN ON THERANOS SPECIFIC METHODS.

12:46PM 8 MR. COOPERSMITH: YOUR HONOR, OBJECTION. THERE'S NO
12:46PM 9 EVIDENCE OF ANY GLUCOSE RESULT IN THIS EXHIBIT THAT WAS
12:46PM 10 ADMITTED INTO EVIDENCE.

12:46PM 11 THE COURT: MR. BOSTIC, ARE YOU SPEAKING ABOUT
12:46PM 12 SOMETHING THAT WAS NOT IN EVIDENCE IN THIS CASE?

12:46PM 13 MR. BOSTIC: I BELIEVE WHAT I'M SHOWING NOW IS IN
12:46PM 14 EVIDENCE, YOUR HONOR.

12:46PM 15 THE COURT: THIS DOCUMENT?

12:46PM 16 MR. BOSTIC: YES.

12:46PM 17 MR. COOPERSMITH: YOUR HONOR, THE PROBLEM IS THERE'S
12:46PM 18 NO RESULT. YOU CAN SEE RIGHT HERE THERE'S A RANGE, BUT THERE'S
12:46PM 19 NO GLUCOSE RESULT REPORTED TO MS. TOMPKINS.

12:46PM 20 THE COURT: UNDERSTOOD. BUT, MR. BOSTIC, THIS
12:47PM 21 DOCUMENT IS IN EVIDENCE?

12:47PM 22 MR. BOSTIC: IT IS, YOUR HONOR, IN THIS CURRENT
12:47PM 23 FORM.

12:47PM 24 THE COURT: YES. YOU CAN COMMENT ON THE DOCUMENT
12:47PM 25 ITSELF, BUT NOT AS TO ANYTHING THAT IS NOT IN EVIDENCE OF

12:47PM 1 COURSE.

12:47PM 2 MR. BOSTIC: UNDERSTOOD. THANK YOU, YOUR HONOR.

12:47PM 3 YOU'LL RECALL THAT WHEN WE LOOKED AT THE ELEMENTS FOR WIRE
12:47PM 4 FRAUD, THERE WAS LANGUAGE SAYING THAT THE WIRE ITSELF NEED NOT
12:47PM 5 BE FRAUDULENT.

12:47PM 6 WHAT THAT MEANS IN THE CONTEXT OF THESE TRANSMITTED
12:47PM 7 PATIENT RESULTS IS THAT EVEN IF YOU FOUND CONTRARY TO THE
12:47PM 8 EVIDENCE THAT SOME OF THESE PATIENT TEST RESULTS WERE NOT
12:47PM 9 INACCURATE, THAT STILL WOULD NOT MEAN THAT THEY COULD NOT FORM
12:47PM 10 THE BASIS OF A WIRE FRAUD CONVICTION.

12:47PM 11 IF YOU FIND THAT THERE WAS A SCHEME TO DEFRAUD PATIENTS,
12:47PM 12 AND THAT THESE WIRES WERE IN FURTHERANCE OF THAT SCHEME, IT'S
12:47PM 13 NOT BARRIER TO A GUILTY VERDICT ON THESE COUNTS THAT THE WIRE
12:47PM 14 ITSELF DIDN'T CONTAIN ANY FRAUDULENT INFORMATION.

12:47PM 15 I'LL REFER YOU TO THE INSTRUCTION WE'VE REVIEWED IF YOU
12:47PM 16 WOULD LIKE TO UNDERSTAND THAT POINT BETTER.

12:48PM 17 LET'S TALK NEXT ABOUT COUNT TWELVE, WHICH IS A PAYMENT
12:48PM 18 MADE BY THERANOS TO A COMPANY CALLED HORIZON, AND IT RELATES TO
12:48PM 19 A MEDIA BUY.

12:48PM 20 MR. COOPERSMITH SUGGESTED THAT YOU SHOULD FIND NOT GUILTY
12:48PM 21 ON THIS COUNT BECAUSE YOU DON'T KNOW ENOUGH ABOUT IT. IN FACT,
12:48PM 22 ONE DOCUMENT TELLS YOU EVERYTHING YOU NEED TO KNOW ABOUT THIS
12:48PM 23 COUNT, AND THAT'S EXHIBIT 5454.

12:48PM 24 ON THE FACE OF THIS DOCUMENT, IT'S CLEAR THAT THIS PAYMENT
12:48PM 25 WAS FOR T.V., RADIO AND DJ AND TV HOSTS ON AIR SEGMENTS BUYS

12:48PM 1 FOR THE TIME PERIOD INDICATED.

12:48PM 2 SO THE QUESTION IS HOW DO WE KNOW THIS WAS IN FURTHERANCE
12:48PM 3 OF THE SCHEME TO DEFRAUD PATIENTS?

12:48PM 4 AGAIN, OTHER EVIDENCE IN THE CASE ESTABLISHES THE
12:48PM 5 EXISTENCE OF THAT SCHEME TO DEFRAUD. OF COURSE, AS AN
12:49PM 6 ESSENTIAL PART OF THAT SCHEME TO DEFRAUD PATIENTS, THERANOS HAD
12:49PM 7 TO MARKET ITSELF TO PATIENTS. THEY HAD TO ATTRACT CUSTOMERS
12:49PM 8 AND GET THEM IN THE DOOR AND GET THEIR ATTENTION.

12:49PM 9 IT'S CLEAR FROM THIS DOCUMENT THAT THIS WIRE TRANSFER,
12:49PM 10 THIS PAYMENT WAS IN FURTHERANCE OF THAT BECAUSE THIS WAS
12:49PM 11 PROMOTING THE COMPANY'S LAB TESTING TO PATIENTS.

12:49PM 12 MR. COOPERSMITH SAYS THAT YOU CANNOT CONVICT ON THIS COUNT
12:49PM 13 BECAUSE YOU DON'T KNOW THINGS LIKE THE CONTENT OF THE ADS, WHEN
12:49PM 14 THEY AIRED, WHO SAW THEM, THOSE THINGS AREN'T REQUIRED. YOU
12:49PM 15 DON'T NEED TO KNOW THE EXACT CONTENT OF THE ADS, AGAIN, BECAUSE
12:49PM 16 THE CONTENT OF THE WIRE ITSELF NEED NOT BE FRAUDULENT. YOU
12:49PM 17 DON'T KNOW NEED TO KNOW WHO SAW THEM OR WHETHER ANYBODY RELIED
12:49PM 18 ON THEM, BECAUSE AS THE COURT WILL INSTRUCT YOU, IT'S NOT
12:49PM 19 NECESSARY THAT A SCHEME TO DEFRAUD ACTUALLY BE SUCCESSFUL IN
12:49PM 20 ORDER FOR A CONVICTION TO RESULT.

12:49PM 21 SO THOSE THINGS ARE RED HERRINGS BY THE DEFENSE, AND I
12:50PM 22 WANT TO MAKE SURE THAT YOU'RE NOT DISTRACTED BY THEM.

12:50PM 23 I'LL ALSO POINT OUT THAT THAT SAME DOCUMENT INCLUDES AN
12:50PM 24 ATTACHMENT THAT IS LABELED DJ COPYING POINTS. SO IT DOES
12:50PM 25 INCLUDE SOME OF THE CONTENT OF THIS ADVERTISING THAT THIS

12:50PM 1 PAYMENT WAS GOING TO PAY FOR. AND YOU'LL SEE AS RELEVANT TO
12:50PM 2 THE SCHEME TO DEFRAUD HERE THAT CONTENT EMPHASIZES THERANOS'S
12:50PM 3 FINGERSTICK BLOOD TESTING METHOD.

12:50PM 4 SO HOW DID THIS SCHEME WORK? BECAUSE THESE TWO SCHEMES
12:50PM 5 WERE SUCCESSFUL FOR A NUMBER OF YEARS, THE SCHEMES TO DEFRAUD
12:50PM 6 PATIENTS AND INVESTORS.

12:50PM 7 WELL, YOU SAW THAT THEY INVOLVED STOLEN CREDIBILITY. THE
12:50PM 8 DEFENDANTS STOLE THE CREDIBILITY OF OTHER ORGANIZATIONS LIKE
12:50PM 9 PHARMACEUTICAL COMPANIES THAT THEY CLAIMED HAD VALIDATED THEIR
12:50PM 10 TECHNOLOGY;

12:51PM 11 WALGREENS, WHO THEY WERE PARTNERING WITH;

12:51PM 12 THE MEMBERS OF THE BOARD;

12:51PM 13 THEY STOLE THE CREDIBILITY OF THE PRESS ALSO BY
12:51PM 14 ENGINEERING FALSE INFORMATION TO APPEAR IN PRESS ARTICLES AND
12:51PM 15 THEN SPREADING THAT INFORMATION TO VICTIMS;

12:51PM 16 THEY BORROWED THE CREDIBILITY OF THE U.S. MILITARY BY
12:51PM 17 CLAIMING THAT ORGANIZATION WAS RELYING ON THE COMPANY'S
12:51PM 18 TECHNOLOGY; AND,

12:51PM 19 THEY EXPLOITED HOW FALSE INFORMATION SPREADS TO MAKE THEIR
12:51PM 20 JOB OF DECEIVING ALL OF THOSE PEOPLE EASIER AND MORE EFFICIENT.

12:51PM 21 BUT DON'T LET THE FACT THAT THOSE LIES TOOK ON A LIFE OF
12:51PM 22 THEIR OWN DISTRACT YOU FROM THE FACT THAT THIS IS ALL ABOUT
12:51PM 23 MR. BALWANI'S ACTIONS AND HIS CHOICES.

12:51PM 24 SO YOU SHOULD ASK HOW WOULD MR. BALWANI'S ACTIONS AND
12:51PM 25 CHOICES HAVE BEEN DIFFERENT OVER THE YEARS IF HE WAS NOT A

12:51PM 1 PARTICIPANT IN THESE TWO SCHEMES TO DEFRAUD INVESTORS AND
12:51PM 2 PATIENTS?

12:51PM 3 HERE ARE SOME EXAMPLES:

12:51PM 4 MR. BALWANI WOULD HAVE TAKEN SERIOUSLY CONCERNS OF
12:52PM 5 SCIENTISTS AT THERANOS ABOUT PROBLEMS WITH TESTING. YOU'LL
12:52PM 6 RECALL THAT DR. PANDORI SUGGESTED THAT THEY NOT USE THE EDISON
12:52PM 7 FOR TESTING ANYMORE.

12:52PM 8 AND WHEN THE LAB DIRECTOR, ADAM ROSENDORFF, SPECIFICALLY
12:52PM 9 SAID NOT TO USE THE EDISON ON HCG, MR. BALWANI, AS THE PERSON
12:52PM 10 OVERSEEING THE LAB, WOULD HAVE RESPONDED TO THAT WITH CONCERN
12:52PM 11 AND WOULD HAVE KEPT THAT DECISION IN PLACE UNTIL DR. ROSENDORFF
12:52PM 12 WAS COMFORTABLE RESUMING TESTING ON THAT PLATFORM.

12:52PM 13 IF MR. BALWANI HAD NOT BEEN A PARTICIPANT IN THESE SCHEMES
12:52PM 14 WHEN MULTIPLE SCIENTISTS, INCLUDING LAB DIRECTORS, QUIT
12:52PM 15 THERANOS OVER THE CONCERNS ABOUT THE RELIABILITY AND ACCURACY
12:52PM 16 OF THE TESTING, MR. BALWANI WOULD HAVE MOVED QUICKLY TO HIRE
12:52PM 17 AND ASSIGN ANOTHER QUALIFIED LAB DIRECTOR TO OVERSEE THE
12:52PM 18 OPERATION OF THIS LAB THAT HAD SO MANY PROBLEMS.

12:52PM 19 IF HE REALLY CARED ABOUT FIXING THE PROBLEMS AT THERANOS,
12:52PM 20 THAT'S WHAT HE WOULD HAVE DONE INSTEAD OF HIRING HIS
12:53PM 21 DERMATOLOGIST AND ANOTHER CO-LABORATORY DIRECTOR WHO MAY AS
12:53PM 22 WELL HAVE BEEN CARDBOARD CUTOUTS FOR ALL OF THE IMPACT THEY HAD
12:53PM 23 ON THE ACCURACY AND RELIABILITY OF TESTING AT THE COMPANY.

12:53PM 24 AND THAT'S NOT A CRITICISM OF THEM. THE EVIDENCE SHOWS
12:53PM 25 THAT THEY FULFILLED THEIR MANDATE. THEIR ASSIGNMENT AS GIVEN

12:53PM 1 TO THEM BY MR. BALWANI DID NOT INCLUDE MEANINGFUL PARTICIPATION
12:53PM 2 OF THE RUNNING OF THE LAB.

12:53PM 3 IF MR. BALWANI WEREN'T A PARTICIPATE IN THESE SCHEMES, HE
12:53PM 4 WOULD HAVE BEEN TROUBLED BY FALSE CLAIMS ABOUT THERANOS IN THE
12:53PM 5 MEDIA, CITING MS. HOLMES AND HIM AS A SOURCE; AND HE WOULDN'T
12:53PM 6 HAVE REJECTED DR. PANDORI'S IDEA THAT MS. HOLMES SHOULD CONSULT
12:53PM 7 WITH TECHNICAL PEOPLE AT THE COMPANY SO SHE COULD DO A BETTER
12:53PM 8 JOB OF BEING ACCURATE IN THOSE INTERVIEWS, HE WOULD HAVE BEEN
12:53PM 9 EVEN MORE TROUBLED BY MISLEADING STATEMENTS ON HIS COMPANY'S
12:53PM 10 OWN WEBSITES.

12:53PM 11 WHEN INVESTORS WANTED TO MEET THE LEADERS OF THERANOS, HE
12:53PM 12 WOULD HAVE GIVEN HONEST INFORMATION ABOUT THE COMPANY'S STATUS
12:53PM 13 AND ACHIEVEMENTS, INSTEAD OF WORKING WITH MS. HOLMES TO DECEIVE
12:54PM 14 PEOPLE OVER AND OVER AGAIN.

12:54PM 15 HE WOULD HAVE TOLD INVESTORS, WALGREENS REPRESENTATIVES
12:54PM 16 AND OTHER VIP VISITORS TO THERANOS, THAT THE DEVICES THAT THEY
12:54PM 17 WERE SHOWING THEM IN CONFERENCE ROOMS WERE NOT ACTUALLY THE
12:54PM 18 DEVICES THAT WERE GOING TO BE USED TO RUN THOSE VIP'S SAMPLES
12:54PM 19 WHEN THEY HAD DEMOS DONE AT THE COMPANY.

12:54PM 20 WHEN MR. MENDENHALL ASKED MR. BALWANI TO TELL HIM ABOUT
12:54PM 21 THE STATE OF THE COMPANY, HE WOULDN'T HAVE REPEATED THE SAME
12:54PM 22 FALSE STATEMENTS WHEN MS. HOLMES WASN'T THERE.

12:54PM 23 LATER, WHEN MR. MENDENHALL WANTED TO INVEST MORE BUT
12:54PM 24 NEEDED MORE CONCRETE INFORMATION ABOUT THE COMPANY, MR. BALWANI
12:54PM 25 WOULD HAVE PROVIDED IT BECAUSE HE WOULD HAVE HAD NOTHING TO

12:54PM 1 HIDE INSTEAD OF GOING SILENT ON THAT INVESTOR.

12:54PM 2 WHEN MR. EISENMAN ASKED ABOUT REPORTS DETAILING THE ACTUAL
12:54PM 3 LIMITS OF THE THERANOS TECHNOLOGY, MR. BALWANI WOULD HAVE
12:54PM 4 ADMITTED THE TRUTH TO THAT INVESTOR, HE WOULD HAVE COME CLEAN
12:54PM 5 INSTEAD OF SAYING THAT THE SOURCE DIDN'T KNOW WHAT THEY WERE
12:55PM 6 TALKING ABOUT.

12:55PM 7 WHEN THE CMS INSPECTION FOUND SERIOUS PROBLEMS IN THE
12:55PM 8 THERANOS LAB, MR. BALWANI WOULD HAVE FOCUSSED ON SOLUTIONS
12:55PM 9 RATHER THAN TRYING TO PERSUADE SARAH BENNETT NOT TO CALL IT
12:55PM 10 WHAT SHE SAW IT.

12:55PM 11 TOWARD THE BEGINNING OF THE DEFENSE CLOSING, MR. BALWANI'S
12:55PM 12 LAWYER SAID THERE WAS NO EVIDENCE HE ALONE, OR WORKING WITH
12:55PM 13 MS. HOLMES, TRIED TO DECEIVE OR CHEAT ANYONE. IF THAT WERE AT
12:55PM 14 ALL TRUE, MR. BALWANI WOULD HAVE MADE THE OPPOSITE CHOICE IN
12:55PM 15 EACH AND EVERY ONE OF THE SITUATIONS I'VE JUST DESCRIBED, AND
12:55PM 16 THAT IS HOW YOU AS THE JURY ARE ABLE TO JUDGE THE INTENT AND
12:55PM 17 STATE OF MIND OF THE DEFENDANT, NOT BECAUSE YOU'RE A MIND
12:55PM 18 READER AND NOT BECAUSE YOU'RE ABLE TO RELY ON WHAT THE LAWYERS
12:55PM 19 SAY IN INTERPRETING MR. BALWANI'S ACTIONS OR STATEMENTS, BUT
12:55PM 20 BECAUSE YOU KNOW WHAT HE DID AND YOU KNOW ABOUT THE CHOICES HE
12:55PM 21 MADE HIMSELF. YOU'VE SEEN THAT EVIDENCE.

12:56PM 22 SO WHEN YOU DELIBERATE AND MAKE YOUR DECISION, YOU SHOULD
12:56PM 23 RELY ON THAT EVIDENCE. YOU SHOULD REVIEW ALL OF THE EVIDENCE,
12:56PM 24 ASSIGN IT THE WEIGHT THAT YOU THINK IS APPROPRIATE. AND
12:56PM 25 INSTEAD OF RELYING ON THE DEFENSE COUNSEL'S CHARACTERIZATION OR

1 THE GOVERNMENT'S CHARACTERIZATION OF THINGS, TRUST YOUR OWN
2 COMMON SENSE, TRUST YOUR EYES, TRUST YOUR MEMORIES ABOUT WHAT
3 THE EVIDENCE IN THIS TRIAL HAS ACTUALLY SHOWN, AND WHEN YOU DO
4 THAT, THE ONLY RESULT THAT YOU'RE ABLE TO REACH THAT IS
5 SUPPORTED BY ALL OF THE EVIDENCE IN THIS CASE WILL BE A VERDICT
6 OF GUILTY ON EVERY COUNT IN THE INDICTMENT.

7 ON BEHALF OF THE UNITED STATES, THANK YOU FOR YOUR
8 ATTENTION THROUGHOUT THE TRIAL AND TODAY.

9 THE COURT: THANK YOU, MR. BOSTIC.

10 LADIES AND GENTLEMEN, THAT CONCLUDES THE ARGUMENTS IN THE
11 CASE. THE ONLY THINGS PRIOR TO YOUR DELIBERATIONS ARE MY
12 INSTRUCTIONS. LET'S TAKE ABOUT A 12 MINUTE BREAK. THE
13 INSTRUCTIONS WILL TAKE A LITTLE LESS THAN AN HOUR TO READ TO
14 YOU I BELIEVE. WHY DON'T WE TAKE A 10 OR 12 MINUTE BREAK NOW,
15 WE'LL RETURN AND I'LL READ THOSE INSTRUCTIONS TO YOU.

16 LET ME TELL YOU, YOU WILL, AND I THINK I TOLD YOU THIS
17 BEFORE IN OUR VOIR DIRE AND IN OUR PRELIMINARY INSTRUCTIONS,
18 EACH OF YOU, EACH OF THE 12 JURORS WILL HAVE A COPY OF THE
19 INSTRUCTIONS IN THE DELIBERATION ROOM. YOU WON'T HAVE IT HERE
20 WHILE I READ THEM TO YOU, BUT YOU WILL HAVE THEM IN THE
21 DELIBERATION ROOM FOR YOU TO REFER TO.

22 SO LET'S TAKE ABOUT A 12 MINUTE BREAK NOW. WE'LL COME
23 BACK, AND I'LL READ THE INSTRUCTIONS. THANK YOU.

24 (RECESS FROM 12:57 P.M. UNTIL 1:18 P.M.)

25 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

01:18PM 1 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

01:18PM 2 OUR JURY AND ALTERNATES ARE PRESENT. LADIES AND
01:18PM 3 GENTLEMEN, I WILL NOW READ TO YOU THE FINAL INSTRUCTIONS. AS I
01:18PM 4 INDICATED, EACH OF YOU WILL HAVE A COPY OF THESE INSTRUCTIONS
01:19PM 5 FOR YOU TO REFERENCE IN THE JURY ROOM.

01:19PM 6 MEMBERS OF THE JURY, NOW THAT YOU HAVE HEARD ALL OF THE
01:19PM 7 EVIDENCE, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW THAT APPLIES
01:19PM 8 TO THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE
01:19PM 9 IN THE JURY ROOM FOR YOU TO CONSULT.

01:19PM 10 IT IS YOUR DUTY TO WEIGH AND TO EVALUATE ALL OF THE
01:19PM 11 EVIDENCE RECEIVED IN THE CASE AND IN THAT PROCESS TO DECIDE THE
01:19PM 12 FACTS. IT IS ALSO YOUR DUTY TO APPLY THE LAW AS I GIVE IT TO
01:19PM 13 YOU TO THE FACTS AS YOU FIND THEM WHETHER YOU AGREE WITH THE
01:19PM 14 LAW OR NOT. YOU MUST DECIDE THIS CASE SOLELY ON THE EVIDENCE
01:19PM 15 AND THE LAW. DO NOT ALLOW PERSONAL LIKES OR DISLIKES,
01:19PM 16 SYMPATHY, PREJUDICE, FEAR OR PUBLIC OPINION TO INFLUENCE YOU.

01:20PM 17 YOU SHOULD ALSO NOT BE INFLUENCED BY ANY PERSON'S RACE,
01:20PM 18 COLOR, RELIGIOUS BELIEFS, NATIONAL ANCESTRY, SEXUAL
01:20PM 19 ORIENTATION, GENDER IDENTITY, GENDER, PROFESSION, CELEBRITY,
01:20PM 20 ECONOMIC CIRCUMSTANCES, POSITION IN LIFE OR POSITION IN THE
01:20PM 21 COMMUNITY.

01:20PM 22 ALSO, DO NOT ALLOW YOURSELF TO BE INFLUENCED BY PERSONAL
01:20PM 23 LIKES OR DISLIKES, SYMPATHY, PREJUDICE, FEAR, PUBLIC OPINION,
01:20PM 24 OR BIASES, INCLUDING UNCONSCIOUS BIASES. UNCONSCIOUS BIASES
01:20PM 25 ARE STEREOTYPES, ATTITUDES, OR PREFERENCES THAT PEOPLE MAY

01:20PM 1 CONSCIOUSLY REJECT BUT MAY BE EXPRESSED WITHOUT CONSCIOUS
01:20PM 2 AWARENESS, CONTROL, OR INTENTION.

01:20PM 3 YOU WILL RECALL THAT YOU TOOK AN OATH PROMISING TO DO SO
01:20PM 4 AT THE BEGINNING OF THE CASE.

01:20PM 5 YOU MUST FOLLOW ALL OF THESE INSTRUCTIONS AND NOT SINGLE
01:21PM 6 OUT SOME AND IGNORE OTHERS. THEY ARE ALL IMPORTANT.

01:21PM 7 PLEASE DO NOT READ INTO THESE INSTRUCTIONS OR INTO
01:21PM 8 ANYTHING I MAY HAVE SAID OR DONE ANY SUGGESTION AS TO WHAT
01:21PM 9 VERDICT YOU SHOULD RETURN -- THAT IS A MATTER ENTIRELY UP TO
01:21PM 10 YOU.

01:21PM 11 THE INDICTMENT IS NOT EVIDENCE. MR. BALWANI, THE
01:21PM 12 DEFENDANT, HAS PLEADED NOT GUILTY TO THE CHARGES. MR. BALWANI
01:21PM 13 IS PRESUMED TO BE INNOCENT UNLESS AND UNTIL THE GOVERNMENT
01:21PM 14 PROVES HIM GUILTY BEYOND A REASONABLE DOUBT.

01:21PM 15 IN ADDITION, MR. BALWANI DOES NOT HAVE TO TESTIFY OR
01:21PM 16 PRESENT ANY EVIDENCE. MR. BALWANI DOES NOT HAVE TO PROVE
01:21PM 17 INNOCENCE; THE GOVERNMENT HAS THE BURDEN OF PROVING EVERY
01:21PM 18 ELEMENT OF THE CHARGES BEYOND A REASONABLE DOUBT.

01:21PM 19 FOR REASONS THAT DO NOT CONCERN YOU, THE CASE AGAINST
01:22PM 20 MR. BALWANI'S CODEFENDANT, MS. ELIZABETH HOLMES, IS NOT BEFORE
01:22PM 21 YOU. DO NOT SPECULATE WHY. THIS FACT SHOULD NOT INFLUENCE
01:22PM 22 YOUR VERDICT WITH REFERENCE TO MR. BALWANI.

01:22PM 23 YOU HAVE HEARD EVIDENCE THAT MS. HOLMES HAS BEEN TRIED
01:22PM 24 BEFORE. KEEP IN MIND, HOWEVER, THAT YOU MUST DECIDE THIS CASE
01:22PM 25 SOLELY ON THE EVIDENCE PRESENTED TO YOU IN THIS TRIAL. YOU ARE

01:22PM 1 NOT TO CONSIDER THE FACT OF OR ANY OTHER ASPECT OF A PREVIOUS
01:22PM 2 TRIAL INVOLVING MS. HOLMES IN DECIDING THIS CASE. YOU MUST
01:22PM 3 BASE YOUR VERDICT SOLELY ON THE EVIDENCE RECEIVED IN THIS
01:22PM 4 TRIAL.

01:22PM 5 A DEFENDANT IN A CRIMINAL CASE HAS A CONSTITUTIONAL RIGHT
01:22PM 6 NOT TO TESTIFY. IN ARRIVING AT YOUR VERDICT, THE LAW PROHIBITS
01:22PM 7 YOU FROM CONSIDERING IN ANY MANNER THAT MR. BALWANI DID NOT
01:23PM 8 TESTIFY.

01:23PM 9 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
01:23PM 10 FIRMLY CONVINCED MR. BALWANI IS GUILTY. IT IS NOT REQUIRED
01:23PM 11 THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

01:23PM 12 A REASONABLE DOUBT IS A DOUBT BASED UPON REASON AND COMMON
01:23PM 13 SENSE AND IS NOT BASED PURELY ON SPECULATION. IT MAY ARISE
01:23PM 14 FROM A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL OF THE
01:23PM 15 EVIDENCE, OR FROM LACK OF EVIDENCE.

01:23PM 16 IF AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL OF
01:23PM 17 THE EVIDENCE, YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT
01:23PM 18 THAT MR. BALWANI IS GUILTY, IT IS YOUR DUTY TO FIND MR. BALWANI
01:23PM 19 NOT GUILTY.

01:23PM 20 ON THE OTHER HAND, IF AFTER A CAREFUL AND IMPARTIAL
01:23PM 21 CONSIDERATION OF ALL OF THE EVIDENCE, YOU ARE CONVINCED BEYOND
01:24PM 22 A REASONABLE DOUBT THAT MR. BALWANI IS GUILTY, IT IS YOUR DUTY
01:24PM 23 TO FIND MR. BALWANI GUILTY.

01:24PM 24 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING WHAT THE
01:24PM 25 FACTS ARE CONSISTS OF:

01:24PM 1 THE SWORN TESTIMONY OF ANY WITNESS;

01:24PM 2 THE EXHIBITS THAT ARE RECEIVED IN EVIDENCE; AND,

01:24PM 3 ANY FACTS TO WHICH THE PARTIES HAVE AGREED.

01:24PM 4 IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE

01:24PM 5 TESTIMONY AND EXHIBITS RECEIVED IN EVIDENCE. THE FOLLOWING

01:24PM 6 THINGS ARE NOT EVIDENCE, AND YOU MAY NOT CONSIDER THEM IN

01:24PM 7 DECIDING WHAT THE FACTS ARE:

01:24PM 8 QUESTIONS, STATEMENTS, OBJECTIONS, AND ARGUMENTS BY THE

01:24PM 9 LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES.

01:25PM 10 ALTHOUGH YOU MUST CONSIDER A LAWYER'S QUESTIONS TO UNDERSTAND

01:25PM 11 THE ANSWERS OF A WITNESS, THE LAWYER'S QUESTIONS ARE NOT

01:25PM 12 EVIDENCE.

01:25PM 13 SIMILARLY, WHAT THE LAWYERS HAVE SAID IN THEIR OPENING

01:25PM 14 STATEMENTS, CLOSING ARGUMENTS AND AT OTHER TIMES IS INTENDED TO

01:25PM 15 HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF

01:25PM 16 THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS

01:25PM 17 STATE THEM, YOUR MEMORY OF THEM CONTROLS.

01:25PM 18 ANY TESTIMONY THAT I HAVE EXCLUDED, STRICKEN, OR

01:25PM 19 INSTRUCTED YOU TO DISREGARD IS NOT EVIDENCE. IN ADDITION, SOME

01:25PM 20 EVIDENCE WAS RECEIVED ONLY FOR A LIMITED PURPOSE; WHEN I HAVE

01:25PM 21 INSTRUCTED YOU TO CONSIDER CERTAIN EVIDENCE IN A LIMITED WAY,

01:25PM 22 YOU MUST DO SO.

01:25PM 23 ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS NOT

01:26PM 24 IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY

01:26PM 25 ON THE EVIDENCE RECEIVED AT THE TRIAL.

01:26PM 1 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE
01:26PM 2 IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT
01:26PM 3 WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.
01:26PM 4 CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE, THAT IS, IT IS
01:26PM 5 PROOF OF ONE OR MORE FACTS FROM WHICH ONE CAN FIND ANOTHER
01:26PM 6 FACT.

01:26PM 7 YOU ARE TO CONSIDER BOTH DIRECT AND CIRCUMSTANTIAL
01:26PM 8 EVIDENCE. EITHER CAN BE USED TO PROVE ANY FACT. THE LAW MAKES
01:26PM 9 NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT
01:26PM 10 OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH
01:26PM 11 WEIGHT TO GIVE TO ANY EVIDENCE.

01:26PM 12 NOW, BY WAY OF EXAMPLE, IF YOU WAKE UP IN THE MORNING AND
01:27PM 13 SEE THAT THE SIDEWALK IS WET, YOU MAY FIND FROM THAT FACT THAT
01:27PM 14 IT RAINED DURING THE NIGHT. HOWEVER, OTHER EVIDENCE SUCH AS A
01:27PM 15 TURNED-ON GARDEN HOSE MAY PROVIDE AN EXPLANATION FOR WATER ON
01:27PM 16 THE SIDEWALK. THEREFORE, BEFORE YOU DECIDE THAT A FACT HAS
01:27PM 17 BEEN PROVED BY CIRCUMSTANTIAL EVIDENCE, YOU MUST CONSIDER ALL
01:27PM 18 OF THE EVIDENCE IN LIGHT OF REASON, EXPERIENCE, AND COMMON
01:27PM 19 SENSE.

01:27PM 20 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE
01:27PM 21 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.
01:27PM 22 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR
01:27PM 23 NONE OF IT.

01:27PM 24 IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE
01:27PM 25 INTO ACCOUNT:

01:27PM 1 THE WITNESS'S OPPORTUNITY AND ABILITY TO SEE OR HEAR OR
01:28PM 2 KNOW THE THINGS TESTIFIED TO;
01:28PM 3 THE WITNESS'S MEMORY;
01:28PM 4 THE WITNESS'S MANNER WHILE TESTIFYING;
01:28PM 5 THE WITNESS'S INTEREST IN THE OUTCOME OF THE CASE, IF ANY;
01:28PM 6 THE WITNESS'S BIAS OR PREJUDICE, IF ANY;
01:28PM 7 WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'S
01:28PM 8 TESTIMONY;
01:28PM 9 THE REASONABLENESS OF THE WITNESS'S TESTIMONY IN LIGHT OF
01:28PM 10 ALL OF THE EVIDENCE; AND,
01:28PM 11 ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.
01:28PM 12 YOU SHOULD USE THE SAME STANDARD IN JUDGING THE
01:28PM 13 CREDIBILITY OF EVERY WITNESS, REGARDLESS OF WHAT HIS OR HER
01:28PM 14 OCCUPATION OR BACKGROUND MAY BE.
01:28PM 15 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT
01:28PM 16 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES
01:28PM 17 DIFFERENT WITNESSES WILL GIVE DIFFERENT VERSIONS OF WHAT
01:28PM 18 HAPPENED. PEOPLE OFTEN FORGET THINGS OR MAKE MISTAKES IN WHAT
01:29PM 19 THEY REMEMBER. ALSO, TWO PEOPLE MAY SEE THE SAME EVENT, BUT
01:29PM 20 REMEMBER IT DIFFERENTLY. YOU MAY CONSIDER THESE DIFFERENCES,
01:29PM 21 BUT DO NOT DECIDE THAT TESTIMONY IS UNTRUE JUST BECAUSE IT
01:29PM 22 DIFFERS FROM OTHER TESTIMONY.
01:29PM 23 HOWEVER, IF YOU DECIDE THAT A WITNESS HAS DELIBERATELY
01:29PM 24 TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT, YOU MAY
01:29PM 25 CHOOSE NOT TO BELIEVE ANYTHING THAT WITNESS SAID. ON THE OTHER

01:29PM 1 HAND, IF YOU THINK THE WITNESS TESTIFIED UNTRUTHFULLY ABOUT
01:29PM 2 SOME THINGS BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY ACCEPT THE
01:29PM 3 PART YOU THINK IS TRUE AND IGNORE THE REST.

01:29PM 4 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT
01:29PM 5 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY ABOUT
01:29PM 6 IT. WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESSES ARE AND
01:30PM 7 HOW MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

01:30PM 8 YOU HAVE HEARD TESTIMONY FROM RICHARD SONNIER WHO
01:30PM 9 TESTIFIED TO HIS OPINIONS AND THE REASONS FOR HIS OPINIONS.
01:30PM 10 THIS OPINION TESTIMONY IS ALLOWED BECAUSE OF THE EDUCATION OR
01:30PM 11 EXPERIENCE OF THIS WITNESS.

01:30PM 12 SUCH OPINION TESTIMONY SHOULD BE JUDGED LIKE ANY OTHER
01:30PM 13 TESTIMONY. YOU MAY ACCEPT IT OR REJECT IT, AND GIVE IT AS MUCH
01:30PM 14 WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS'S
01:30PM 15 EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINION,
01:30PM 16 AND ALL OF THE OTHER EVIDENCE IN THE CASE.

01:30PM 17 YOU HAVE HEARD TESTIMONY FROM DR. AUDRA ZACHMAN AND
01:30PM 18 DR. MARK BURNES WHO TESTIFIED TO BOTH FACTS AND OPINIONS AND
01:31PM 19 THE REASONS FOR THEIR OPINIONS.

01:31PM 20 FACT TESTIMONY IS BASED ON WHAT THE WITNESS SAW, HEARD, OR
01:31PM 21 DID.

01:31PM 22 OPINION TESTIMONY IS BASED ON THE EDUCATION OR EXPERIENCE
01:31PM 23 OF THE WITNESS.

01:31PM 24 AS TO THE TESTIMONY ABOUT FACTS, IT IS YOUR JOB TO DECIDE
01:31PM 25 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.

01:31PM 1 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR PART OF IT OR NONE
01:31PM 2 OF IT. YOU MAY TAKE INTO ACCOUNT THE FACTORS DISCUSSED EARLIER
01:31PM 3 IN THESE INSTRUCTIONS THAT WERE PROVIDED TO ASSIST YOU IN
01:31PM 4 WEIGHING THE CREDIBILITY OF WITNESSES.

01:31PM 5 AS TO THE TESTIMONY ABOUT THE WITNESS'S OPINIONS, THIS
01:31PM 6 OPINION TESTIMONY IS ALLOWED BECAUSE OF THE EDUCATION OR
01:31PM 7 EXPERIENCE OF THIS WITNESS. OPINION TESTIMONY SHOULD BE JUDGED
01:32PM 8 LIKE ANY OTHER TESTIMONY. YOU MAY ACCEPT ALL OF IT, PART OF
01:32PM 9 IT, OR NONE OF IT. YOU SHOULD GIVE IT AS MUCH WEIGHT AS YOU
01:32PM 10 THINK IT DESERVES, CONSIDERING THE WITNESS'S EDUCATION AND
01:32PM 11 EXPERIENCE, THE REASONS GIVEN FOR THE OPINION, AND ALL OF THE
01:32PM 12 OTHER EVIDENCE IN THE CASE.

01:32PM 13 DURING THE TRIAL CERTAIN CHARTS AND SUMMARIES WERE SHOWN
01:32PM 14 TO YOU IN ORDER TO HELP EXPLAIN THE EVIDENCE IN THE CASE.
01:32PM 15 THESE CHARTS AND SUMMARIES WERE NOT ADMITTED INTO EVIDENCE AND
01:32PM 16 WILL NOT GO INTO THE JURY ROOM WITH YOU. THEY ARE NOT
01:32PM 17 THEMSELVES EVIDENCE OR PROOF OF ANY FACTS. IF THEY DO NOT
01:32PM 18 CORRECTLY REFLECT THE FACTS OR FIGURES SHOWN BY THE EVIDENCE IN
01:32PM 19 THE CASE, YOU SHOULD DISREGARD THESE CHARTS AND SUMMARIES AND
01:32PM 20 DETERMINE THE FACTS FROM THE UNDERLYING EVIDENCE.

01:32PM 21 A SEPARATE CRIME IS CHARGED AGAINST MR. BALWANI IN EACH
01:33PM 22 COUNT. YOU MUST DECIDE EACH COUNT SEPARATELY. YOUR VERDICT ON
01:33PM 23 ONE COUNT SHOULD NOT CONTROL YOUR VERDICT ON ANY OTHER COUNT.

01:33PM 24 THE INDICTMENT CHARGES THAT THE OFFENSES ALLEGED IN COUNTS
01:33PM 25 ONE THROUGH TWELVE WERE COMMITTED ON OR ABOUT A CERTAIN DATE.

1 ALTHOUGH IT IS NOT NECESSARY FOR THE GOVERNMENT TO PROVE
2 BEYOND A REASONABLE DOUBT THAT THE OFFENSES WERE COMMITTED ON A
3 DATE REASONABLY NEAR THE DATE ALLEGED IN THE INDICTMENT, IT IS
4 NOT NECESSARY FOR THE GOVERNMENT TO PROVE THAT THE OFFENSES
5 WERE COMMITTED PRECISELY ON THE DATE CHARGED.

6 YOU ARE HERE ONLY TO DETERMINE WHETHER MR. BALWANI IS
7 GUILTY OR NOT GUILTY OF THE CHARGES IN THE INDICTMENT.
8 MR. BALWANI IS NOT ON TRIAL FOR ANY CONDUCT OR OFFENSE NOT
9 CHARGED IN THE INDICTMENT.

10 MR. BALWANI IS CHARGED IN COUNTS ONE AND TWO OF THE
11 INDICTMENT WITH CONSPIRING TO COMMIT WIRE FRAUD IN VIOLATION OF
12 SECTION 1349 OF TITLE 18 OF THE UNITED STATES CODE.

13 MR. BALWANI IS CHARGED IN COUNT ONE OF THE INDICTMENT WITH
14 CONSPIRING TO COMMIT WIRE FRAUD AGAINST INVESTORS IN THERANOS
15 DURING THE PERIOD 2010 TO 2015.

16 MR. BALWANI IS CHARGED IN COUNT TWO OF THE INDICTMENT WITH
17 CONSPIRING TO COMMIT WIRE FRAUD AGAINST PATIENTS WHO PAID FOR
18 THERANOS'S BLOOD TESTING SERVICES DURING THE PERIOD 2013 TO
19 2016.

20 I WILL DEFINE WIRE FRAUD LATER IN THESE INSTRUCTIONS.

21 IN ORDER FOR MR. BALWANI TO BE FOUND OF EITHER COUNT, YOU
22 MUST ALL UNANIMOUSLY AGREE WITH RESPECT TO EACH COUNT THAT THE
23 GOVERNMENT HAS PROVED EACH OF THE FOLLOWING ELEMENTS BEYOND A
24 REASONABLE DOUBT:

25 FIRST, THAT THERE WAS AN AGREEMENT BETWEEN TWO OR MORE

PERSONS TO COMMIT WIRE FRAUD AS CHARGED IN THE INDICTMENT; AND,
SECOND, THAT MR. BALWANI BECAME A MEMBER OF THE ALLEGED
CONSPIRACY KNOWING OF AT LEAST ONE OF ITS OBJECTS AND INTENDING
TO HELP ACCOMPLISH IT.

A CONSPIRACY IS A KIND OF CRIMINAL PARTNERSHIP -- AN
AGREEMENT OF TWO OR MORE PERSONS TO COMMIT ONE OR MORE CRIMES.
THE CRIME OF CONSPIRACY IS THE AGREEMENT TO DO SOMETHING
UNLAWFUL. IT DOES NOT MATTER WHETHER THE CRIME AGREED UPON WAS
COMMITTED.

FOR A CONSPIRACY TO HAVE EXISTED, IT IS NOT NECESSARY THAT
THE CONSPIRATORS MADE A FORMAL AGREEMENT OR THAT THEY AGREED ON
EVERY DETAIL OF THE CONSPIRACY. IT IS NOT ENOUGH, HOWEVER,
THAT THEY SIMPLY MET, DISCUSSED MATTERS OF COMMON INTEREST,
ACTED IN SIMILAR WAYS, OR PERHAPS HELPED ONE ANOTHER. NOR IS
IT ENOUGH, STANDING ALONE, THAT THEY HAD A BUSINESS OR ROMANTIC
RELATIONSHIP. YOU MUST FIND THAT THERE WAS A PLAN TO COMMIT
WIRE FRAUD AS ALLEGED IN THE INDICTMENT AS AN OBJECT OF THE
CONSPIRACY WITH ALL OF YOU AGREEING AS TO THE PARTICULAR CRIME
WHICH THE CONSPIRATORS AGREED TO COMMIT.

ONE BECOMES A MEMBER OF A CONSPIRACY BY WILLFULLY
PARTICIPATING IN THE UNLAWFUL PLAN WITH THE INTENT TO ADVANCE
OR FURTHER SOME OBJECT OR PURPOSE OF THE CONSPIRACY, EVEN
THOUGH THE PERSON DOES NOT HAVE FULL KNOWLEDGE OF ALL THE
DETAILS OF THE CONSPIRACY. FURTHERMORE, ONE WHO WILLFULLY
JOINS AN EXISTING CONSPIRACY IS AS RESPONSIBLE FOR IT AS THE

01:37PM 1 ORIGINATORS.

01:37PM 2 ON THE OTHER HAND, ONE WHO HAS NO KNOWLEDGE OF A
01:37PM 3 CONSPIRACY BUT HAPPENS TO ACT IN A WAY THAT FURTHERS SOME
01:37PM 4 OBJECT OR PURPOSE OF THE CONSPIRACY DOES NOT THEREBY BECOME A
01:37PM 5 CONSPIRATOR.

01:37PM 6 SIMILARLY, A PERSON DOES NOT BECOME A CONSPIRATOR MERELY
01:38PM 7 BY ASSOCIATING WITH ONE OR MORE PERSONS WHO ARE CONSPIRATORS,
01:38PM 8 NOR MERELY BY KNOWING THAT A CONSPIRACY EXISTS.

01:38PM 9 WILLFULLY MEANS TO ACT WITH KNOWLEDGE THAT ONE'S CONDUCT
01:38PM 10 IS UNLAWFUL AND WITH THE INTENT TO DO SOMETHING THE LAW
01:38PM 11 FORBIDS.

01:38PM 12 A CONSPIRACY MAY CONTINUE FOR A LONG PERIOD OF TIME AND
01:38PM 13 MAY INCLUDE THE PERFORMANCE OF MANY TRANSACTIONS. IT IS NOT
01:38PM 14 NECESSARY THAT ALL MEMBERS OF THE CONSPIRACY JOIN IT AT THE
01:38PM 15 SAME TIME, AND ONE MAY BECOME A MEMBER OF A CONSPIRACY WITHOUT
01:38PM 16 FULL KNOWLEDGE OF ALL THE DETAILS OF THE UNLAWFUL SCHEME OR THE
01:38PM 17 NAMES, IDENTITIES, OR LOCATIONS OF ALL OF THE OTHER MEMBERS.

01:39PM 18 EVEN IF MR. BALWANI DID NOT DIRECTLY CONSPIRE WITH OTHER
01:39PM 19 CONSPIRATORS IN THE OVERALL SCHEME, MR. BALWANI HAS, IN EFFECT,
01:39PM 20 AGREED TO PARTICIPATE IN AN ALLEGED CONSPIRACY IF THE
01:39PM 21 GOVERNMENT PROVES EACH OF THE FOLLOWING BEYOND A REASONABLE
01:39PM 22 DOUBT:

01:39PM 23 FIRST, THAT MR. BALWANI DIRECTLY CONSPIRED WITH ONE OR
01:39PM 24 MORE CONSPIRATORS TO CARRY OUT AT LEAST ONE OF THE OBJECTS OF
01:39PM 25 THE CONSPIRACY;

01:39PM 1 SECOND, THAT MR. BALWANI KNEW OR HAD REASON TO KNOW THAT
01:39PM 2 OTHER CONSPIRATORS WERE INVOLVED WITH THOSE WITH WHOM
01:39PM 3 MR. BALWANI DIRECTLY CONSPIRED; AND,

01:39PM 4 THIRD, THAT MR. BALWANI HAD REASON TO BELIEVE THAT
01:40PM 5 WHATEVER BENEFITS MR. BALWANI MIGHT GET FROM THE ALLEGED
01:40PM 6 CONSPIRACY WERE PROBABLY DEPENDENT UPON THE SUCCESS OF THE
01:40PM 7 ENTIRE VENTURE.

01:40PM 8 IT IS NOT A DEFENSE THAT A PERSON'S PARTICIPATION IN A
01:40PM 9 CONSPIRACY WAS MINOR OR FOR A SHORT PERIOD OF TIME.

01:40PM 10 EACH MEMBER OF A CONSPIRACY IS RESPONSIBLE FOR THE
01:40PM 11 REASONABLY FORESEEABLE ACTIONS OF THE OTHER CONSPIRATORS
01:40PM 12 PERFORMED DURING THE COURSE AND IN FURTHERANCE OF THE
01:40PM 13 CONSPIRACY. IF ONE MEMBER OF A CONSPIRACY COMMITS A CRIME IN
01:40PM 14 FURTHERANCE OF A CONSPIRACY, THE OTHER MEMBERS HAVE ALSO UNDER
01:40PM 15 THE LAW COMMITTED THAT CRIME.

01:40PM 16 THEREFORE, YOU MAY FIND MR. BALWANI GUILTY OF WIRE FRAUD
01:40PM 17 AGAINST INVESTORS IN THERANOS AS CHARGED IN COUNTS THREE
01:40PM 18 THROUGH EIGHT OF THE INDICTMENT IF THE GOVERNMENT HAS PROVED
01:40PM 19 EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

01:41PM 20 FIRST, A COCONSPIRATOR COMMITTED THE CRIME OF WIRE FRAUD
01:41PM 21 AS ALLEGED IN THAT COUNT;

01:41PM 22 SECOND, THE COCONSPIRATOR WAS A MEMBER OF THE CONSPIRACY
01:41PM 23 CHARGED IN COUNT ONE OF THE INDICTMENT;

01:41PM 24 THIRD, THE COCONSPIRATOR COMMITTED THE CRIME OF WIRE FRAUD
01:41PM 25 IN FURTHERANCE OF THE CONSPIRACY;

01:41PM 1 FOURTH, MR. BALWANI WAS A MEMBER OF THE SAME CONSPIRACY AT
01:41PM 2 THE TIME THE OFFENSE CHARGED IN COUNTS THREE THROUGH EIGHT WAS
01:41PM 3 COMMITTED BY THE COCONSPIRATOR.

01:41PM 4 I'LL READ THAT ONE AGAIN.

01:41PM 5 FOURTH, MR. BALWANI WAS A MEMBER OF THE SAME CONSPIRACY AT
01:41PM 6 THE TIME THE OFFENSE CHARGED IN COUNTS THREE THROUGH EIGHT WAS
01:41PM 7 COMMITTED BY THE COCONSPIRATOR; AND,

01:41PM 8 FIFTH, THE OFFENSE FELL WITHIN THE SCOPE OF THE UNLAWFUL
01:42PM 9 AGREEMENT AND COULD REASONABLY HAVE BEEN FORESEEN BY
01:42PM 10 MR. BALWANI TO BE A NECESSARY OR NATURAL CONSEQUENCE OF THE
01:42PM 11 UNLAWFUL AGREEMENT.

01:42PM 12 YOU MAY FIND MR. BALWANI GUILTY OF WIRE FRAUD AGAINST
01:42PM 13 PATIENTS WHO PAID FOR THERANOS'S BLOOD TESTING SERVICES AS
01:42PM 14 CHARGED IN COUNTS NINE THROUGH TWELVE OF THE INDICTMENT IF THE
01:42PM 15 GOVERNMENT HAS PROVED EACH OF THE FOLLOWING ELEMENTS BEYOND A
01:42PM 16 REASONABLE DOUBT:

01:42PM 17 FIRST, THE COCONSPIRATOR COMMITTED THE CRIME OF WIRE FRAUD
01:42PM 18 AS ALLEGED IN THAT COUNT;

01:42PM 19 SECOND, THE COCONSPIRATOR WAS A MEMBER OF THE CONSPIRACY
01:42PM 20 CHARGED IN COUNT TWO OF THE INDICTMENT;

01:42PM 21 THIRD, THE COCONSPIRATOR COMMITTED THE CRIME OF WIRE FRAUD
01:42PM 22 IN FURTHERANCE OF THE CONSPIRACY;

01:42PM 23 FOURTH, MR. BALWANI WAS A MEMBER OF THE SAME CONSPIRACY AT
01:43PM 24 THE TIME THE OFFENSE CHARGED IN COUNTS NINE THROUGH TWELVE WAS
01:43PM 25 COMMITTED BY THE COCONSPIRATOR; AND,

01:43PM 1 FIFTH, THE OFFENSE FELL WITHIN THE SCOPE OF THE UNLAWFUL
01:43PM 2 AGREEMENT AND COULD REASONABLY HAVE BEEN FORESEEN BY
01:43PM 3 MR. BALWANI TO BE A NECESSARY OR NATURAL CONSEQUENCE OF THE
01:43PM 4 UNLAWFUL AGREEMENT.

01:43PM 5 MR. BALWANI IS CHARGED IN COUNTS THREE THROUGH TWELVE OF
01:43PM 6 THE INDICTMENT WITH WIRE FRAUD IN VIOLATION OF SECTION 1343 OF
01:43PM 7 TITLE 18 OF THE UNITED STATES CODE.

01:43PM 8 MR. BALWANI IS CHARGED IN COUNTS THREE THROUGH EIGHT OF
01:43PM 9 THE INDICTMENT WITH WIRE FRAUD AGAINST INVESTORS IN THERANOS.
01:43PM 10 IN PARTICULAR:

01:43PM 11 MR. BALWANI IS CHARGED IN COUNT THREE WITH WIRE FRAUD IN
01:44PM 12 CONNECTION WITH A WIRE TRANSFER OF \$99,990 ON OR ABOUT
01:44PM 13 DECEMBER 30, 2013.

01:44PM 14 MR. BALWANI IS CHARGED IN COUNT FOUR WITH WIRE FRAUD IN
01:44PM 15 CONNECTION WITH A WIRE TRANSFER OF \$5,349,900 ON OR ABOUT
01:44PM 16 DECEMBER 31, 2013.

01:44PM 17 MR. BALWANI IS CHARGED IN COUNT FIVE WITH WIRE FRAUD IN
01:44PM 18 CONNECTION WITH A WIRE TRANSFER OF \$4,875,000 ON OR ABOUT
01:44PM 19 DECEMBER 31, 2013.

01:44PM 20 MR. BALWANI IS CHARGED IN COUNT SIX WITH WIRE FRAUD IN
01:44PM 21 CONNECTION WITH A WIRE TRANSFER OF \$38,336,632 ON OR ABOUT
01:45PM 22 FEBRUARY 6TH, 2014.

01:45PM 23 MR. BALWANI IS CHARGED IN COUNT SEVEN WITH WIRE FRAUD IN
01:45PM 24 CONNECTION WITH A WIRE TRANSFER OF \$99,999,984 ON OR ABOUT
01:45PM 25 OCTOBER 31, 2014.

MR. BALWANI IS CHARGED IN COUNT EIGHT WITH WIRE FRAUD IN CONNECTION WITH A WIRE TRANSFER OF \$5,999,997 ON OR ABOUT OCTOBER 31, 2014.

MR. BALWANI IS CHARGED IN COUNTS NINE THROUGH TWELVE OF THE INDICTMENT WITH WIRE FRAUD AGAINST PATIENTS WHO PAID FOR THERANOS'S BLOOD TESTING SERVICES. IN PARTICULAR:

MR. BALWANI IS CHARGED IN COUNT NINE WITH WIRE FRAUD IN CONNECTION WITH A TELEPHONE CALL FROM PATIENT INITIALS B.B. TO THERANOS REGARDING B.B.'S LABORATORY BLOOD TEST RESULTS ON OR ABOUT OCTOBER 12, 2015.

MR. BALWANI IS CHARGED IN COUNT TEN WITH WIRE FRAUD IN CONNECTION WITH A WIRE TRANSMISSION OF PATIENT INITIAL E.T.'S LABORATORY BLOOD TEST RESULTS ON OR ABOUT MAY 11, 2015.

MR. BALWANI IS CHARGED IN COUNT ELEVEN WITH WIRE FRAUD IN CONNECTION WITH A WIRE TRANSMISSION OF PATIENT INITIAL M.E.'S LABORATORY BLOOD TEST RESULTS ON OR ABOUT MAY 16TH, 2015.

MR. BALWANI IS CHARGED IN COUNT TWELVE WITH WIRE FRAUD IN CONNECTION WITH A WIRE TRANSFER OF 112-6661 ON OR ABOUT AUGUST 3, 2015.

IN ORDER FOR MR. BALWANI TO BE FOUND GUILTY OF EACH COUNT OF WIRE FRAUD, YOU MUST ALL UNANIMOUSLY AGREE WITH RESPECT TO EACH COUNT THAT THE GOVERNMENT HAS PROVED EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

FIRST, MR. BALWANI KNOWINGLY PARTICIPATED IN, DEvised, OR INTENDED TO DEVISE A SCHEME OR PLAN TO DEFRAUD OR A SCHEME OR

01:47PM 1 PLAN FOR OBTAINING MONEY OR PROPERTY BY MEANS OF FALSE OR
01:48PM 2 FRAUDULENT PRETENSES, REPRESENTATIONS, OR PROMISES. A SCHEME
01:48PM 3 TO DEFRAUD IS A DECEPTIVE SCHEME TO DEPRIVE A PERSON OF MONEY
01:48PM 4 OR PROPERTY. DECEITFUL STATEMENTS OF HALF-TRUTHS MAY
01:48PM 5 CONSTITUTE FALSE OR FRAUDULENT REPRESENTATIONS;

01:48PM 6 SECOND, THE STATEMENTS MADE AS PART OF THE SCHEME WERE
01:48PM 7 MATERIAL. STATEMENTS ARE MATERIAL IF THEY HAD A NATURAL
01:48PM 8 TENDENCY TO INFLUENCE OR WERE CAPABLE OF INFLUENCING A PERSON
01:48PM 9 TO PART WITH MONEY OR PROPERTY;

01:48PM 10 THIRD, MR. BALWANI ACTED WITH THE INTENT TO DEFRAUD, THAT
01:48PM 11 IS, THE INTENT TO DECEIVE AND CHEAT. THE INTENT TO DECEIVE AND
01:49PM 12 CHEAT IS THE INTENT TO DEPRIVE SOMEONE OF MONEY OR PROPERTY BY
01:49PM 13 MEANS OF DECEPTION; AND,

01:49PM 14 FOURTH, MR. BALWANI USED, OR CAUSED TO BE USED, AN
01:49PM 15 INTERSTATE WIRE COMMUNICATION TO CARRY OUT OR ATTEMPT TO CARRY
01:49PM 16 OUT AN ESSENTIAL PART OF THE SCHEME. THE WIRE ITSELF NEED NOT
01:49PM 17 BE FALSE OR MISLEADING.

01:49PM 18 IN DETERMINING WHETHER A SCHEME TO DEFRAUD EXISTS, YOU MAY
01:49PM 19 CONSIDER NOT ONLY MR. BALWANI'S WORDS AND STATEMENTS BUT ALSO
01:49PM 20 THE CIRCUMSTANCES IN WHICH THEY ARE USED AS A WHOLE.

01:49PM 21 A WIRING IS CAUSED WHEN ONE KNOWS THAT A WIRE WILL BE USED
01:49PM 22 IN THE ORDINARY COURSE OF BUSINESS OR WHEN ONE CAN REASONABLY
01:49PM 23 FORESEE SUCH USE.

01:49PM 24 IT NEED NOT HAVE BEEN REASONABLY FORESEEABLE TO
01:50PM 25 MR. BALWANI THAT THE WIRE COMMUNICATION WOULD BE INTERSTATE IN

01:50PM 1 NATURE. RATHER, IT MUST HAVE BEEN REASONABLY FORESEEABLE TO
01:50PM 2 MR. BALWANI THAT SOME WIRE COMMUNICATION WOULD OCCUR IN
01:50PM 3 FURTHERANCE OF THE SCHEME, AND AN INTERSTATE WIRE COMMUNICATION
01:50PM 4 MUST HAVE ACTUALLY OCCURRED IN FURTHERANCE OF THE SCHEME.

01:50PM 5 AN INTENT TO DEFRAUD IS AN INTENT TO DECEIVE AND CHEAT,
01:50PM 6 THAT IS, TO DEPRIVE SOMEONE OF MONEY OR PROPERTY BY MEANS OF
01:50PM 7 DECEPTION.

01:50PM 8 YOU MAY CONSIDER WHETHER MR. BALWANI HAD AN HONEST, GOOD
01:50PM 9 FAITH BELIEF IN THE TRUTH OF THE SPECIFIC MISREPRESENTATIONS
01:51PM 10 ALLEGED IN THE INDICTMENT IN DETERMINING WHETHER OR NOT HE
01:51PM 11 ACTED WITH INTENT TO DEFRAUD.

01:51PM 12 AN ACT IS DONE KNOWINGLY IF MR. BALWANI WAS AWARE OF THE
01:51PM 13 ACT AND DID NOT ACT THROUGH IGNORANCE, MISTAKE, OR ACCIDENT.
01:51PM 14 THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT MR. BALWANI KNEW
01:51PM 15 THAT HIS ACTS WERE UNLAWFUL. YOU MAY CONSIDER EVIDENCE OF
01:51PM 16 MR. BALWANI'S WORDS OR ACTS, ALONG WITH ALL OF THE OTHER
01:51PM 17 EVIDENCE IN DECIDING WHETHER MR. BALWANI ACTED KNOWINGLY.

01:51PM 18 TO FIND THAT MR. BALWANI ACTED KNOWINGLY, YOU MUST FIND
01:51PM 19 THAT HE HIMSELF HAD KNOWLEDGE OF THE FACT AT ISSUE.

01:51PM 20 MR. BALWANI MAY BE FOUND GUILTY OF WIRE FRAUD AS CHARGED
01:52PM 21 IN COUNTS THREE THROUGH TWELVE OF THE INDICTMENT, EVEN IF
01:52PM 22 MR. BALWANI PERSONALLY DID NOT COMMIT THE ACT OR ACTS
01:52PM 23 CONSTITUTING THE CRIME BUT AIDED AND ABETTED IN ITS COMMISSION.

01:52PM 24 TO AID AND ABET MEANS INTENTIONALLY TO HELP SOMEONE ELSE
01:52PM 25 COMMIT A CRIME. TO PROVE MR. BALWANI GUILTY OF WIRE FRAUD BY

01:52PM 1 AIDING AND ABETTING, THE GOVERNMENT MUST PROVE EACH OF THE
01:52PM 2 FOLLOWING BEYOND A REASONABLE DOUBT:

01:52PM 3 FIRST, SOMEONE ELSE COMMITTED THE CONDUCT CHARGED IN
01:52PM 4 COUNTS THREE THROUGH TWELVE OF THE INDICTMENT;

01:52PM 5 SECOND, MR. BALWANI AIDED, COUNSELLED, COMMANDED, INDUCED,
01:52PM 6 OR PROCURED THAT PERSON WITH RESPECT TO AT LEAST ONE ELEMENT OF
01:52PM 7 WIRE FRAUD AS CHARGED IN COUNTS THREE THROUGH TWELVE OF THE
01:53PM 8 INDICTMENT;

01:53PM 9 THIRD, MR. BALWANI ACTED WITH THE INTENT TO FACILITATE
01:53PM 10 WIRE FRAUD AS CHARGED IN COUNTS THREE THROUGH TWELVE OF THE
01:53PM 11 INDICTMENT; AND,

01:53PM 12 FOURTH, MR. BALWANI ACTED BEFORE THE CRIME WAS COMPLETED.

01:53PM 13 IT IS NOT ENOUGH THAT MR. BALWANI MERELY ASSOCIATED WITH
01:53PM 14 THE PERSON COMMITTING THE CRIME OR UNKNOWINGLY OR
01:53PM 15 UNINTENTIONALLY DID THINGS THAT WERE HELPFUL TO THAT PERSON, OR
01:53PM 16 WAS PRESENT AT THE SCENE OF THE CRIME. THE EVIDENCE MUST SHOW
01:53PM 17 BEYOND A REASONABLE DOUBT THAT MR. BALWANI ACTED WITH THE
01:53PM 18 KNOWLEDGE AND INTENTION OF HELPING THAT PERSON COMMIT WIRE
01:53PM 19 FRAUD AS CHARGED IN COUNTS THREE THROUGH TWELVE OF THE
01:53PM 20 INDICTMENT.

01:53PM 21 A DEFENDANT ACTS WITH THE INTENT TO FACILITATE THE CRIME
01:54PM 22 WHEN THE DEFENDANT ACTIVELY PARTICIPATE IN A CRIMINAL VENTURE
01:54PM 23 WITH ADVANCE KNOWLEDGE OF THE CRIME AND HAVING ACQUIRED THAT
01:54PM 24 KNOWLEDGE WHEN THE DEFENDANT STILL HAD A REALISTIC OPPORTUNITY
01:54PM 25 TO WITHDRAW FROM THE CRIME.

01:54PM 1 THE GOVERNMENT IS NOT REQUIRED TO PROVE PRECISELY WHICH
01:54PM 2 PERSON ACTUALLY COMMITTED THE CRIME AND WHICH PERSON AIDED AND
01:54PM 3 ABETTED IF YOU FIND.

01:54PM 4 IF YOU FIND THAT MR. BALWANI WAS A MEMBER OF THE SCHEME TO
01:54PM 5 DEFRAUD INVESTORS IN THERANOS CHARGED IN COUNTS THREE THROUGH
01:54PM 6 EIGHT, AND THAT MR. BALWANI HAD THE INTENT TO DEFRAUD INVESTORS
01:54PM 7 IN THERANOS, MR. BALWANI MAY BE RESPONSIBLE FOR OTHER
01:55PM 8 CO-SCHEMERS' ACTIONS DURING THE COURSE OF AND IN FURTHERANCE OF
01:55PM 9 THE ALLEGED SCHEME, EVEN IF MR. BALWANI DID NOT KNOW WHAT THEY
01:55PM 10 SAID OR DID.

01:55PM 11 FOR MR. BALWANI TO BE GUILTY OF AN OFFENSE COMMITTED BY A
01:55PM 12 CO-SCHEMER IN FURTHERANCE OF THE SCHEME, THE GOVERNMENT MUST
01:55PM 13 PROVE EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

01:55PM 14 FIRST, THE CO-SCHEMER WAS A MEMBER OF THE SCHEME TO
01:55PM 15 DEFRAUD INVESTORS CHARGED IN COUNTS THREE THROUGH EIGHT OF THE
01:55PM 16 INDICTMENT;

01:55PM 17 SECOND, THE COSCHEMER COMMITTED THE OFFENSE IN FURTHERANCE
01:55PM 18 OF THE SCHEME TO DEFRAUD INVESTORS;

01:55PM 19 THIRD, MR. BALWANI WAS A MEMBER OF THE SAME SCHEME TO
01:55PM 20 DEFRAUD AND POSSESSED THE INTENT TO DEFRAUD THERANOS INVESTORS;
01:55PM 21 AND,

01:55PM 22 FOURTH, THE OFFENSE COMMITTED BY THE OTHER -- BY THE
01:55PM 23 COSCHEMER FELL WITHIN THE SCOPE OF THE SCHEME TO DEFRAUD AND
01:56PM 24 WAS ONE THAT MR. BALWANI COULD REASONABLY FORESEE AS A
01:56PM 25 NECESSARY AND NATURAL SEQUENCE OF THE SCHEME TO DEFRAUD.

01:56PM 1 I'LL READ THAT AGAIN.

01:56PM 2 FOURTH, THE OFFENSE COMMITTED BY THE COSCHEMER FELL WITHIN
01:56PM 3 THE SCOPE OF THE SCHEME TO DEFRAUD AND WAS ONE THAT MR. BALWANI
01:56PM 4 COULD REASONABLY FORESEE AS A NECESSARY AND NATURAL CONSEQUENCE
01:56PM 5 OF THE SCHEME TO DEFRAUD.

01:56PM 6 IF YOU FIND THAT MR. BALWANI WAS A MEMBER OF THE SCHEME TO
01:56PM 7 DEFRAUD PATIENTS WHO PAID FOR THERANOS'S BLOOD TESTING SERVICES
01:56PM 8 CHARGED IN COUNTS NINE THROUGH TWELVE AND THAT MR. BALWANI HAD
01:56PM 9 THE INTENT TO DEFRAUD THERANOS PAYING PATIENTS, MR. BALWANI MAY
01:56PM 10 BE RESPONSIBLE FOR OTHER COSCHEMERS' ACTIONS DURING THE COURSE
01:56PM 11 OF AND IN FURTHERANCE OF THE ALLEGED SCHEME, EVEN IF
01:56PM 12 MR. BALWANI DID NOT KNOW WHAT THEY SAID OR DID.

01:57PM 13 FOR MR. BALWANI TO BE GUILTY OF AN OFFENSE COMMITTED BY A
01:57PM 14 COSCHEMER IN FURTHERANCE OF THE SCHEME, THE GOVERNMENT MUST
01:57PM 15 PROVE EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

01:57PM 16 FIRST, THE COSCHEMER WAS A MEMBER OF THE SCHEME TO DEFRAUD
01:57PM 17 PATIENTS WHO PAID FOR THERANOS'S BLOOD TESTING SERVICES CHARGED
01:57PM 18 IN COUNTS NINE THROUGH TWELVE OF THE INDICTMENT;

01:57PM 19 SECOND, THE COSCHEMER COMMITTED THE OFFENSE IN FURTHERANCE
01:57PM 20 OF THE SCHEME TO DEFRAUD THERANOS PAYING PATIENTS;

01:57PM 21 THIRD, MR. BALWANI WAS A MEMBER OF THE SAME SCHEME TO
01:57PM 22 DEFRAUD, AND POSSESSED THE INTENT TO DEFRAUD THERANOS PAYING
01:57PM 23 PATIENTS; AND,

01:57PM 24 FOURTH, THE OFFENSE COMMITTED BY THE COSCHEMER FELL WITHIN
01:57PM 25 THE SCOPE OF THE SCHEME TO DEFRAUD AND WAS ONE THAT MR. BALWANI

COULD REASONABLY FORESEE AS A NECESSARY AND NATURAL CONSEQUENCE
OF THE SCHEME TO DEFRAUD.

AN ALLEGED VICTIM'S NEGLIGENCE IS NOT A DEFENSE TO WIRE
FRAUD. YOU HAVE HEARD EVIDENCE REGARDING INVESTORS' PROCESS
FOR DECIDING WHETHER TO INVEST MONEY IN THERANOS. YOU ARE TO
CONSIDER THIS EVIDENCE TO THE EXTENT THAT IT HELPS YOU
DETERMINE WHETHER MR. BALWANI MADE FALSE OR FRAUDULENT
PRETENSES, REPRESENTATIONS, OR PROMISES AS PART OF A SCHEME OR
PLAN TO DEFRAUD. AND YOU CAN SEE THE PRIOR WIRE FRAUD
INSTRUCTION.

YOU MAY ALSO CONSIDER THIS EVIDENCE TO THE EXTENT THAT IT
HELPS YOU DETERMINE WHETHER THE STATEMENTS MADE AS PART OF THE
ALLEGED SCHEME WERE MATERIAL; THAT IS, WHETHER THEY HAD A
NATURAL TENDENCY OR WERE CAPABLE OF INFLUENCING A PERSON TO
PART WITH MONEY OR PROPERTY. AND YOU MAY SEE THE PRIOR WIRE
FRAUD INSTRUCTION.

SUCCESS OF A SCHEME TO DEFRAUD IS NOT NECESSARY FOR
PURPOSES OF DETERMINING WHETHER WIRE FRAUD OCCURRED. FOR
COUNTS THREE THROUGH TWELVE, IT IS NOT NECESSARY THAT
MR. BALWANI MADE A PROFIT OR THAT ANYONE ACTUALLY SUFFERED A
LOSS.

YOU HAVE HEARD EVIDENCE REGARDING ALLEGED VIOLATIONS AND
REGULATIONS OF INDUSTRY STANDARDS. YOU MAY CONSIDER SUCH
EVIDENCE, ALONG WITH OTHER EVIDENCE, LIMITED TO ANY PURPOSE FOR
WHICH SUCH EVIDENCE WAS ADMITTED, IN ASSESSING WHETHER THE

01:59PM 1 GOVERNMENT HAS PROVED EACH OF THE COUNTS CHARGED IN THE
01:59PM 2 INDICTMENT. HOWEVER, YOU MAY NOT FIND MR. BALWANI LIABLE FOR
02:00PM 3 ANY OF THE OFFENSES ALLEGED IN THE INDICTMENT MERELY BECAUSE HE
02:00PM 4 OR THERANOS MAY HAVE VIOLATED FEDERAL OR STATE REGULATIONS OR
02:00PM 5 BECAUSE MR. BALWANI OR THERANOS MAY HAVE ENGAGED IN NEGLIGENT
02:00PM 6 PRACTICES OR VIOLATED INDUSTRY STANDARDS RELATED TO LABORATORY
02:00PM 7 TESTING OR MEDICAL DEVICES.

02:00PM 8 WHEN YOU BEGIN YOUR DELIBERATIONS, ELECT ONE MEMBER OF THE
02:00PM 9 JURY AS YOUR FOREPERSON WHO WILL PRESIDE OVER THE DELIBERATIONS
02:00PM 10 AND SPEAK FOR YOU HERE IN COURT.

02:00PM 11 YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO
02:00PM 12 REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT, WHETHER GUILTY
02:00PM 13 OR NOT GUILTY, MUST BE UNANIMOUS.

02:00PM 14 EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF BUT YOU
02:01PM 15 SHOULD DO SO ONLY AFTER YOU HAVE CONSIDERED ALL OF THE
02:01PM 16 EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS, AND
02:01PM 17 LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

02:01PM 18 DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION
02:01PM 19 PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A DECISION
02:01PM 20 SIMPLY BECAUSE OTHER JURORS THINK IT IS RIGHT.

02:01PM 21 IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS
02:01PM 22 VERDICT, BUT, OF COURSE, ONLY IF EACH OF YOU CAN DO SO AFTER
02:01PM 23 HAVING MADE YOUR OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN
02:01PM 24 HONEST BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE
02:01PM 25 SIMPLY TO REACH A VERDICT.

PERFORM THESE DUTIES FAIRLY AND IMPARTIALLY. DO NOT ALLOW PERSONAL LIKES OR DISLIKES, SYMPATHY, PREJUDICE, FEAR, OR PUBLIC OPINION TO INFLUENCE YOU. YOU SHOULD ALSO NOT BE INFLUENCED BY ANY PERSON'S RACE, COLOR, RELIGIOUS BELIEFS, NATIONAL ANCESTRY, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER, PROFESSION, CELEBRITY, ECONOMIC CIRCUMSTANCES, OR POSITION IN LIFE OR IN THE COMMUNITY.

ALSO, DO NOT ALLOW YOURSELVES TO BE INFLUENCED BY PERSONAL LIKES OR DISLIKES, SYMPATHY, PREJUDICE, FEAR, PUBLIC OPINION, OR BIASES, INCLUDING UNCONSCIOUS BIASES. UNCONSCIOUS BIASES ARE STEREOTYPES, ATTITUDES, OR PREFERENCES THAT PEOPLE MAY CONSCIOUSLY REJECT BUT MAY BE EXPRESSED WITHOUT CONSCIOUS AWARENESS, CONTROL, OR INTENTION.

IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE WITH ONE ANOTHER WITH A VIEW TOWARD REACHING AGREEMENT IF YOU CAN DO SO. DURING YOUR DELIBERATIONS, YOU SHOULD NOT HESITATE TO REEXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF YOU BECOME PERSUADED THAT IT IS WRONG.

BECAUSE YOU MUST BASE YOUR VERDICT ONLY ON THE EVIDENCE RECEIVED IN THE CASE AND ON THESE INSTRUCTIONS, I REMIND YOU THAT YOU MUST NOT BE EXPOSED TO ANY OTHER INFORMATION ABOUT THE CASE OR TO THE ISSUES IT INVOLVES. EXCEPT FOR DISCUSSING THE CASE WITH YOUR FELLOW JURORS DURING DELIBERATIONS:

DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT LET ANYONE ELSE COMMUNICATE WITH YOU IN ANY WAY ABOUT THE MERITS OF

02:03PM 1 THE CASE OR ANYTHING TO DO WITH IT. THIS RESTRICTION INCLUDES
02:03PM 2 DISCUSSING THE CASE IN PERSON, IN WRITING, BY PHONE, TABLET,
02:03PM 3 COMPUTER, OR ANY OTHER MEANS, VIA EMAIL, TEXT MESSAGING, OR ANY
02:03PM 4 INTERNET CHAT ROOM, BLOG, WEBSITE, OR OTHER FORMS OF SOCIAL
02:04PM 5 MEDIA. THIS RESTRICTION APPLIES TO COMMUNICATING WITH YOUR
02:04PM 6 FAMILY MEMBERS, YOUR EMPLOYER, THE MEDIA OR PRESS, AND THE
02:04PM 7 PEOPLE INVOLVED IN THE TRIAL. IF YOU ARE ASKED OR APPROACHED
02:04PM 8 IN ANY WAY ABOUT YOUR JURY SERVICE OR ANYTHING ABOUT THIS CASE,
02:04PM 9 YOU MUST RESPOND THAT YOU HAVE BEEN ORDERED NOT TO DISCUSS THE
02:04PM 10 MATTER AND TO REPORT THE CONTACT TO THE COURT.

02:04PM 11 DO NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA
02:04PM 12 ACCOUNTS OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH
02:04PM 13 IT; DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES,
02:04PM 14 SEARCHING THE INTERNET (THROUGH GOOGLE OR OTHERWISE) OR USING
02:04PM 15 OTHER REFERENCE MATERIALS, AND DO NOT MAKE ANY INVESTIGATION OR
02:04PM 16 IN ANY OTHER WAY TRY TO LEARN ABOUT THE CASE ON YOUR OWN.

02:04PM 17 THE LAW REQUIRES THESE RESTRICTIONS TO ENSURE THE PARTIES
02:05PM 18 HAVE A FAIR TRIAL BASED ON THE SAME EVIDENCE THAT EACH PARTY
02:05PM 19 HAS HAD AN OPPORTUNITY TO ADDRESS. A JUROR WHO VIOLATES THESE
02:05PM 20 RESTRICTIONS JEOPARDIZES THE FAIRNESS OF THESE PROCEEDINGS, AND
02:05PM 21 A MISTRIAL COULD RESULT THAT WOULD REQUIRE THE ENTIRE TRIAL
02:05PM 22 PROCESS TO START OVER.

02:05PM 23 IF ANY JUROR IS EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE
02:05PM 24 NOTIFY THE COURT IMMEDIATELY.

02:05PM 25 SOME OF YOU HAVE TAKEN NOTES DURING THE TRIAL. WHETHER OR

02:05PM 1 NOT YOU TOOK NOTES, YOU SHOULD RELY ON YOUR OWN MEMORY OF WHAT
02:05PM 2 WAS SAID. NOTES ARE ONLY TO ASSIST YOUR MEMORY. YOU SHOULD
02:05PM 3 NOT BE OVERLY INFLUENCED BY YOUR NOTES OR THOSE OF YOUR FELLOW
02:05PM 4 JURORS.

02:05PM 5 THE PUNISHMENT PROVIDED BY LAW FOR THE ALLEGED OFFENSES IS
02:06PM 6 FOR THE COURT TO DECIDE. YOU MAY NOT CONSIDER PUNISHMENT IN
02:06PM 7 DECIDING WHETHER THE GOVERNMENT HAS PROVED ITS CASE AGAINST
02:06PM 8 MR. BALWANI BEYOND A REASONABLE DOUBT.

02:06PM 9 A VERDICT FORM HAS BEEN PREPARED FOR YOU. AFTER YOU HAVE
02:06PM 10 REACHED UNANIMOUS AGREEMENT ON A VERDICT, YOUR FOREPERSON
02:06PM 11 SHOULD COMPLETE THE VERDICT FORM ACCORDING TO YOUR
02:06PM 12 DELIBERATIONS, SIGN AND DATE IT, AND ADVISE THE CLERK THAT YOU
02:06PM 13 ARE READY TO RETURN TO THE COURTROOM.

02:06PM 14 IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO
02:06PM 15 COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE CLERK,
02:06PM 16 SIGNED BY ANY ONE OR MORE OF YOU. NO MEMBER OF THE JURY SHOULD
02:06PM 17 EVER ATTEMPT TO COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING,
02:06PM 18 AND I WILL RESPOND TO THE JURY CONCERNING THE CASE ONLY IN
02:06PM 19 WRITING OR HERE IN OPEN COURT.

02:06PM 20 IF YOU SEND OUT A QUESTION, I WILL CONSULT WITH THE
02:07PM 21 LAWYERS BEFORE ANSWERING, WHICH MAY TAKE SOME TIME. YOU MAY
02:07PM 22 CONTINUE YOUR DELIBERATIONS WHILE WAITING FOR THE ANSWER TO ANY
02:07PM 23 QUESTION. REMEMBER THAT YOU ARE NOT TO TELL ANYONE, INCLUDING
02:07PM 24 ME, HOW THE JURY STANDS NUMERICALLY OR OTHERWISE, ON ANY
02:07PM 25 QUESTION SUBMITTED TO YOU, INCLUDING THE QUESTION OF THE GUILT

02:07PM 1 OF MR. BALWANI, UNTIL AFTER YOU HAVE REACHED A UNANIMOUS
02:07PM 2 VERDICT OR HAVE BEEN DISCHARGED.

02:07PM 3 THAT CONCLUDES THE COURT'S READING OF THE INSTRUCTIONS.
02:07PM 4 ANY OBJECTIONS TO THE INSTRUCTIONS?

02:07PM 5 MR. SCHENK: NO, YOUR HONOR. THANK YOU.

02:07PM 6 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

02:07PM 7 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

02:07PM 8 LADIES AND GENTLEMEN, WE'LL NOW CALL UPON OUR COURTROOM
02:07PM 9 DEPUTY TO SWEAR IN AN OFFICIAL WHO WILL TAKE CHARGE OF THE 12
02:07PM 10 MEMBERS OF THE JURY.

02:07PM 11 SIR, IF YOU WOULD COME FORWARD.

02:08PM 12 (COURT SECURITY OFFICER SWORN.)

02:08PM 13 COURT SECURITY OFFICER: I AFFIRM.

02:08PM 14 THE COURT: THANK YOU THEN.

02:08PM 15 LADIES AND GENTLEMEN, THE 12 SEATED JURORS WILL NOW PLEASE
02:08PM 16 RETIRE TO THE DELIBERATION ROOM TO BEGIN YOUR DELIBERATIONS.

02:08PM 17 OUR TWO ALTERNATES, WOULD YOU PLEASE STAY AND REMAIN IN
02:08PM 18 THE COURTROOM FOR JUST A MOMENT.

02:08PM 19 SO THOSE 12 JURORS MAY NOW RETIRE TO BEGIN YOUR
02:08PM 20 DELIBERATIONS.

02:09PM 21 (JURORS 1 - 12 OUT AT 2:09 P.M.)

02:09PM 22 THE COURT: THANK YOU. PLEASE BE SEATED.

02:09PM 23 THE RECORD SHOULD REFLECT THAT OUR 12 SEATED JURORS HAVE
02:09PM 24 LEFT TO BEGIN THEIR DELIBERATIONS.

02:09PM 25 ALTERNATE JUROR NUMBER 5 AND 6 REMAIN. PLEASE REMEMBER A

02:09PM 1 WHILE AGO MY COMMENTS ABOUT ALTERNATE JURORS. IF YOU RECALL,
02:09PM 2 WE HAVE 12 SEATED JURORS, 2 ALTERNATE JURORS. ALTERNATE JURORS
02:09PM 3 WILL NOT JOIN THE DELIBERATIONS UNLESS A SEATED JUROR IS UNABLE
02:09PM 4 TO CONTINUE THOSE DELIBERATIONS.

02:09PM 5 SHOULD THAT OCCUR, THEN THE ALTERNATE JUROR, BY NUMERICAL,
02:09PM 6 WE WOULD GO 5 AND THEN 6, WOULD REPLACE THAT SEATED AND
02:10PM 7 DELIBERATING JUROR.

02:10PM 8 SO I'M GOING TO PERMIT YOU TO LEAVE IN JUST A MOMENT. I
02:10PM 9 WILL TELL YOU THAT THE ADMONITION IS STILL IN PLACE UNTIL
02:10PM 10 YOU'RE INFORMED OF IT BY EITHER ME OR THE COURT THAT IT'S
02:10PM 11 RELEASED.

02:10PM 12 I'M GOING TO ASK YOU, IF IT'S AT POSSIBLE -- I REALIZE
02:10PM 13 IT'S TEN AFTER 2:00 TODAY. I'M GOING TO ASK YOU IF AT ALL
02:10PM 14 POSSIBLE, IT COULD BE, I DON'T KNOW, BUT IT COULD BE THAT WE
02:10PM 15 MAY NEED AN ALTERNATE JUROR TODAY, WE JUST NEVER KNOW THESE
02:10PM 16 THINGS.

02:10PM 17 BUT IF YOU COULD MAKE YOURSELVES AVAILABLE BY
02:10PM 18 COMMUNICATION, FIRST OF ALL, BY PROVIDING YOUR CURRENT CONTACT
02:10PM 19 INFORMATION WITH MS. ROBINSON, AND, SECONDARILY, I DON'T KNOW
02:10PM 20 IF IT'S POSSIBLE FOR YOU TO BE AVAILABLE TO RETURN TO COURT ON
02:11PM 21 SHORT NOTICE TODAY IF THAT WOULD BE A 20- OR 25-MINUTE
02:11PM 22 ADVENTURE FOR YOU.

02:11PM 23 IS THAT SOMETHING -- LET ME ASK ALTERNATE NUMBER 5, IS
02:11PM 24 THAT SOMETHING THAT YOU COULD DO IF YOU WERE SUMMONED?

02:11PM 25 JUROR: TODAY? YES.

02:11PM 1 THE COURT: OKAY. LET'S JUST START WITH TODAY.

02:11PM 2 RIGHT.

02:11PM 3 ALTERNATE NUMBER 6?

02:11PM 4 JUROR: YES, WITH 30 MINUTES NOTICE.

02:11PM 5 THE COURT: OKAY. GREAT.

02:11PM 6 ANY QUESTIONS FROM COUNSEL?

02:11PM 7 MR. SCHENK: NO, YOUR HONOR.

02:11PM 8 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

02:11PM 9 THE COURT: OKAY. GREAT. THANK YOU VERY MUCH. ALL

02:11PM 10 RIGHT. THANK YOU. THANK YOU. WITH THAT INFORMATION, I'D ASK

02:11PM 11 YOU TO KEEP YOUR ELECTRONIC DEVICES CLOSE TO YOU AND CHARGED.

02:11PM 12 MS. ROBINSON WILL INFORM YOU WHETHER THERE IS A NEED FOR

02:11PM 13 YOU. SHE WILL INFORM YOU AS THE CASE PROCEEDS, IF YOU'RE NOT

02:11PM 14 SUMMONED TODAY, AS THE CASE PROCEEDS, SHE WILL BE IN CONTACT

02:12PM 15 WITH AS TO THE NEED TO RETURN TO COURT. SO IF YOU COULD KEEP

02:12PM 16 YOUR CONTACT INFORMATION CURRENT WITH HER, WE WOULD ALL BE

02:12PM 17 GRATEFUL.

02:12PM 18 LET ME JUST ALSO SAY, IF WE DON'T SEE YOU AGAIN IN THE

02:12PM 19 COURSE OF THE TRIAL, I WANT TO THANK YOU ON BEHALF OF ALL OF

02:12PM 20 THE JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA AND ON BEHALF

02:12PM 21 OF ALL COUNSEL HERE. I WANT TO THANK YOU FOR YOUR

02:12PM 22 PARTICIPATION.

02:12PM 23 YOU'RE STILL SUBJECT TO SERVICE HERE, BUT IT MAY BE THAT

02:12PM 24 WE MAY NOT HAVE BENEFIT OF SEEING YOU AGAIN.

02:12PM 25 AGAIN, I WANT TO THANK YOU FOR YOUR SERVICE.

02:12PM 1 IT'S KIND OF A TOUGH JOB TO BE AN ALTERNATE BECAUSE YOU
02:12PM 2 SIT THROUGH THE WHOLE THING, YOU CARRY EVERYTHING, AND YOU
02:12PM 3 DON'T REALLY GET INTO THE BATTER'S BOX UNTIL THE MANAGER CALLS
02:12PM 4 YOU UP TO PINCH HIT. THAT'S KIND OF THE ANALOGY HERE.
02:12PM 5 BUT STAY TUNED. THAT'S ALL I CAN TELL YOU. STAY TUNED.
02:12PM 6 THANK YOU FOR YOUR AVAILABILITY TODAY.
02:12PM 7 MS. ROBINSON WILL KEEP YOU INFORMED AS TO THE PROGRESS OF
02:12PM 8 THE CASE AS WELL IN ANY EVENT.
02:13PM 9 AND YOU'RE OTHERWISE FREE TO GO NOW. YOU'RE NOT
02:13PM 10 DISCHARGED. YOU'RE STILL PART OF THIS CASE, SO THE ADMONITION
02:13PM 11 STAYS IN PLACE. THANK YOU.
02:13PM 12 ALL RIGHT. ANYTHING FURTHER, COUNSEL?
02:13PM 13 MR. SCHENK: NO, YOUR HONOR.
02:13PM 14 MR. COOPERSMITH: NO, YOUR HONOR.
02:13PM 15 THE COURT: ALL RIGHT. THANK YOU. I'LL STEP DOWN,
02:13PM 16 AND YOU CAN TALK TO MS. ROBINSON IF YOU WOULD BEFORE YOU LEAVE,
02:13PM 17 AND THEN I'LL COME BACK, COUNSEL, AND WE CAN HAVE ANOTHER
02:13PM 18 CONVERSATION.
02:13PM 19 (JUROR OUT AT 2:13 P.M.)
02:13PM 20 (RECESS FROM 2:13 P.M. UNTIL 2:23 P.M.)
02:23PM 21 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.
02:23PM 22 COUNSEL AND MR. BALWANI ARE PRESENT.
02:23PM 23 THE JURORS ARE DELIBERATING. THEY'VE LEFT THE COURTROOM.
02:23PM 24 I JUST WANTED TO INFORM COUNSEL, IF WE RECEIVE ANY NOTES
02:23PM 25 OR ANY WORD FROM THE JURY, I'D LIKE TO HAVE YOU BACK HERE

02:23PM 1 WITHIN 20, 25 MINUTES. IS THAT POSSIBLE FOR BOTH SIDES?

02:23PM 2 MR. SCHENK: YES.

02:23PM 3 MR. COOPERSMITH: YES, YOUR HONOR.

02:23PM 4 THE COURT: GREAT. THANK YOU.

02:23PM 5 IN REGARDS TO DELIBERATIONS TODAY, WHAT -- I DON'T KNOW
02:24PM 6 WHAT THE SCHEDULE IS. AND WE'LL -- MY SENSE IS THAT THE JURY
02:24PM 7 TYPICALLY -- JURORS TYPICALLY WILL INFORM OUR COURTROOM DEPUTY
02:24PM 8 OF THEIR SCHEDULE FOR DELIBERATIONS.

02:24PM 9 WHAT I THOUGHT WE MIGHT DO TODAY, PARTICULARLY IN LIGHT OF
02:24PM 10 JUROR NUMBER 10, IS IF WE GET THEIR SCHEDULE, AS WE GET CLOSE
02:24PM 11 TO THE END OF THE DAY, IT COULD BE THAT WE ENGAGE A REPLACEMENT
02:24PM 12 FOR 10 TODAY.

02:24PM 13 MY THOUGHT WAS SHOULD WE INVITE HER OUT AND TALK TO HER
02:24PM 14 ABOUT HER SITUATION AND THEN MAKE DECISIONS BASED ON THAT?

02:24PM 15 YOU HEARD ME TALK TO OUR ALTERNATES TO BE AVAILABLE TODAY.
02:24PM 16 IT'S SOMETHING WE CAN DO TODAY. WE DON'T HAVE TO FORCE FEED
02:24PM 17 THAT TODAY. WE CAN WAIT UNTIL NEXT WEEK.

02:24PM 18 BUT I DO THINK WE HAVE TO DO SOMETHING ABOUT JUROR NUMBER
02:24PM 19 10 TODAY.

02:24PM 20 ANY THOUGHTS ON THAT?

02:25PM 21 MR. SCHENK: THANK YOU, YOUR HONOR.

02:25PM 22 I THINK THE COURT'S SUGGESTION MAKES SENSE. AT SOME POINT
02:25PM 23 ONCE WE HEAR THE SCHEDULE, TOWARDS THE END OF THE DAY, IT WOULD
02:25PM 24 MAKE SENSE TO INVITE JUROR NUMBER 10 OUT AND MAYBE SIMULTANEOUS
02:25PM 25 WITH THAT AND INVITE OUR FIFTH ALTERNATE BACK IF THE COURT

02:25PM 1 HEARS FROM JUROR NUMBER 10 THAT SHE INTENDS TO MAKE THE
02:25PM 2 REQUEST, I THINK THAT WOULD MAKE SENSE.

02:25PM 3 THE COURT: DOES THAT NOT WORK?

02:25PM 4 MR. SCHENK: YEAH, I THINK BECAUSE WE SWITCHED IT TO
02:25PM 5 THE LAPEL MIKE.

02:25PM 6 THE COURT: I SEE. GOT IT.

02:25PM 7 MR. COOPERSMITH: YOUR HONOR, OBVIOUSLY I MADE THE
02:25PM 8 RECORD I MADE BEFORE ABOUT WHAT OUR POSITION IS.

02:25PM 9 THE COURT: SURE.

02:25PM 10 MR. COOPERSMITH: BUT IN TERMS OF WHAT IS GOING TO
02:25PM 11 HAPPEN TODAY, I DON'T KNOW WHETHER THE END OF THE DAY IS 4:00
02:25PM 12 OR 5:00. I DON'T KNOW IF THE COURT KNOWS THAT EITHER IT SOUNDS
02:25PM 13 LIKE.

02:25PM 14 BUT, YES, I THINK GIVEN THE COURT'S DECISIONS, BRINGING
02:25PM 15 THE JUROR BACK TO SEE IF SHE IN FACT IS ASKING TO BE EXCUSED
02:26PM 16 AND WHAT THE COURT DOES WITH THAT REQUEST.

02:26PM 17 AND THEN IF SHE IS EXCUSED, THEN THE COURT WOULD HAVE TO
02:26PM 18 SUMMON JUROR NUMBER 5 OR ALTERNATE NUMBER 5 BACK. I'M ASSUMING
02:26PM 19 HE WOULDN'T BE BACK TODAY. HE WOULD HAVE TO RESUME.

02:26PM 20 THE COURT: I DON'T KNOW THAT. THAT'S WHY I, I WAS
02:26PM 21 ASKING WHAT TIME.

02:26PM 22 I THINK 5 -- I THINK I SUGGESTED 20 MINUTES, AND I THINK
02:26PM 23 5 WAS OKAY WITH THAT. 6 WAS NOT. 6 WANTED 30 WAS MY
02:26PM 24 RECOLLECTION.

02:26PM 25 MR. COOPERSMITH: RIGHT.

02:26PM 1 THE COURT: AND I WAS OPERATING ON ECONOMIES OF
02:26PM 2 SCALE. IF WE CAN DO IT TODAY, THAT'S FINE. WE'LL HAVE TO DO
02:26PM 3 SOMETHING WITH JUROR NUMBER 10. IT SEEMED IF WE COULD GET IT
02:26PM 4 ALL DONE TODAY AND THEN BRING OUR JURY IN AND THEY WERE
02:26PM 5 RECONSTITUTED, AND THEN WHEN THEY COME BACK MONDAY, I PRESUME
02:26PM 6 THEY'LL COME BACK MONDAY, THEY'LL START DELIBERATIONS ANEW AS
02:27PM 7 THEY WOULD HAVE TO WHEN THEY HAVE A NEW JUROR.

02:27PM 8 MR. COOPERSMITH: YES, THAT'S FINE. BUT MY
02:27PM 9 QUESTION, AND MAYBE I'M MISSING SOMETHING, IF WE'RE NOT TALKING
02:27PM 10 TO JUROR 10 UNTIL THE END OF THE DAY, WHICH COULD BE
02:27PM 11 5:00 O'CLOCK, THEN IF ALTERNATE JUROR NUMBER 5 WERE TO COME
02:27PM 12 BACK AND HE GETS HERE IN 20 MINUTES OR SO, AND I'M FINE WITH
02:27PM 13 THAT, AND NOW WE'RE INTO 5:30.

02:27PM 14 THE COURT: RIGHT. AND THE OTHER TENSION HERE IS
02:27PM 15 THAT I DON'T WANT TO DISRUPT ONGOING DELIBERATIONS. I DON'T
02:27PM 16 WANT TO INTERFERE WITH THE JUROR'S DELIBERATIONS. BUT, YOU
02:27PM 17 KNOW, PERHAPS THE WISER COURSE IS TO WAIT UNTIL THEY TELL US
02:27PM 18 THEY'RE DONE AND THEN CALL 10 IN AND TALK WITH HER. THAT MIGHT
02:27PM 19 BE A SAFER PATH.

02:27PM 20 MR. SCHENK: IT ALSO MIGHT BE USEFUL IF THE JURY --
02:27PM 21 IF ONE OF THE FIRST THINGS THEY DO IS DETERMINE A SCHEDULE FOR
02:27PM 22 TODAY, TO FIND THAT OUT, TO FIND OUT HOW LONG THEY PLAN TO STAY
02:27PM 23 TODAY BECAUSE I THINK THAT WILL CREATE THE INFORMATION WE NEED
02:28PM 24 TO MAKE THE FURTHER DECISIONS, FOR INSTANCE, WHAT TIME TO CALL
02:28PM 25 BACK ALTERNATE NUMBER 5 IF 10 IS GOING TO MAKE THE REQUEST.

02:28PM 1 THE COURT: RIGHT. WELL, LET ME ASK COUNSEL THEN.

02:28PM 2 TYPICALLY MY EXPERIENCE IS, AND MAYBE YOURS AS WELL, IS

02:28PM 3 THAT JURORS, ONE OF THE FIRST THINGS THEY DO IS THAT THEY LET

02:28PM 4 THE CLERK KNOW WHAT THEIR SCHEDULE IS, AND WE CAN GIVE THEM A

02:28PM 5 FEW MINUTES TO DO THAT.

02:28PM 6 LET ME ASK YOU YOUR THOUGHTS ABOUT WHETHER OR NOT I SHOULD

02:28PM 7 MAKE INQUIRY OF THEIR SCHEDULE AND WHETHER YOU -- I WOULD ONLY

02:28PM 8 DO THAT WITH YOUR PERMISSION AND ACQUIESCENCE. I DON'T WANT

02:28PM 9 TO -- AGAIN, I'M VERY CONSCIOUS OF NOT INTERFERING WITH THE

02:28PM 10 DELIBERATIVE PROCESS AND I DON'T WANT TO SIGNAL ANYTHING IN ANY

02:28PM 11 WAY.

02:28PM 12 MR. COOPERSMITH: SURE, YOUR HONOR.

02:28PM 13 I DON'T HAVE ANY OBJECTION TO THE COURT MAKING AN INQUIRY.

02:28PM 14 I MEAN, YOU'RE RIGHT, IN MY EXPERIENCE, YOU KNOW, JURORS

02:28PM 15 USUALLY THINK ABOUT THAT, BUT THEY MAY OR MAY NOT.

02:28PM 16 IT'S OBVIOUSLY HELPFUL TO THE COURT AND TO THE PARTIES.

02:28PM 17 SO WE DON'T HAVE ANY OBJECTION.

02:29PM 18 OBVIOUSLY THE COURT WOULDN'T SUGGEST WHAT THE SCHEDULE

02:29PM 19 SHOULD BE OR WHAT THEY SHOULD DO TO DELIBERATE. BUT JUST TO

02:29PM 20 ASK WHAT THEIR SCHEDULE IS AND IT'S UP TO THEM, IT SEEMS FINE

02:29PM 21 TO ME.

02:29PM 22 THE COURT: WELL, LET'S GIVE THEM SOME TIME. IT'S

02:29PM 23 2:30. THEY WENT OUT ABOUT TEN AFTER. WHY DON'T WE GIVE THEM

02:29PM 24 SOME TIME AND SEE IF WE HEAR FROM THEM, AND THEN WE CAN DISCUSS

02:29PM 25 IN A LITTLE BIT ABOUT WHAT THEY'RE GOING TO DO.

02:29PM 1 MR. COOPERSMITH: WOULD YOUR HONOR LIKE US TO REMAIN
02:29PM 2 IN THE COURTHOUSE WHILE THIS HAPPENS OR --

02:29PM 3 THE COURT: DO YOU HAVE SOME PLACE BETTER TO GO?

02:29PM 4 MR. COOPERSMITH: WELL, MAYBE THE LOCAL BAR.

02:29PM 5 (LAUGHTER.)

02:29PM 6 THE COURT: WELL, WHY DON'T WE -- WELL, IF THAT'S
02:29PM 7 POSSIBLE, IF YOU WANT TO JUST -- OR BE AVAILABLE WITHIN, LIKE I
02:29PM 8 SAID, WITHIN 20 MINUTES.

02:29PM 9 MR. COOPERSMITH: WE CAN STAY IN THE ATTORNEY'S
02:29PM 10 LOUNGE A LITTLE WHILE UNTIL WE SEE WHAT HAPPENS.

02:29PM 11 THE COURT: FAIR ENOUGH.

02:29PM 12 MR. SCHENK: JUST ONE THING. I THINK WE WANTED TO
02:29PM 13 CONFIRM THAT THE EVIDENCE WENT BACK. I THINK THE PARTIES HAD
02:29PM 14 AN OPPORTUNITY TO REVIEW THE EXHIBITS AND WE JUST HAVEN'T SAID
02:30PM 15 THAT ON THE RECORD.

02:30PM 16 THE COURT: WELL, I HAD GIVEN IT TO THE PARTIES TO
02:30PM 17 REVIEW AND CONFIRM WITH BOTH SIDES THAT ALL OF THE EVIDENCE
02:30PM 18 THAT YOU HAD EXPECTED AND YOU THOUGHT WAS ADMITTED APPEARED ON
02:30PM 19 THE EXHIBIT LIST, AND YOU'VE CONFIRMED THAT. MY SENSE IS THAT
02:30PM 20 THAT WAS DONE?

02:30PM 21 MR. SCHENK: YES.

02:30PM 22 MR. COOPERSMITH: YES. THAT'S MY UNDERSTANDING,
02:30PM 23 YOUR HONOR.

02:30PM 24 THE COURT: OKAY.

02:30PM 25 MR. COOPERSMITH: THE ONLY THING I DON'T KNOW, AND

02:30PM 1 PROBABLY MY TEAM KNOWS THIS AND I'M JUST IN THE DARK, THERE ARE
02:30PM 2 SOME EXHIBITS THAT BOTH SIDES SHOWED THAT ARE NATIVE
02:30PM 3 SPREADSHEETS, SO THEY WOULDN'T BE ABLE TO BE IN HARD COPY.

02:30PM 4 SO PROBABLY SOMEBODY KNOWS THIS WHO IS SMARTER THAN ME,
02:30PM 5 BUT I DON'T KNOW HOW THAT WORKS.

02:30PM 6 THE COURT: I THOUGHT THEY WERE GIVEN A THUMB DRIVE
02:30PM 7 OF SOME SORT.

02:30PM 8 MR. COOPERSMITH: RIGHT. AND THEY HAVE A COMPUTER.

02:30PM 9 THE COURT: YES.

02:30PM 10 MR. COOPERSMITH: OKAY. THAT MAKES SENSE.

02:30PM 11 MR. SCHENK: YES, THAT'S CORRECT.

02:30PM 12 THE COURT: AND THE COMPUTER THAT THEY HAVE IS, AS I
02:30PM 13 UNDERSTAND IT, IS NOT ACCESSIBLE TO THE INTERNET OR ANYTHING
02:30PM 14 ELSE, IT'S JUST A READ TYPE COMPUTER, IT HAS NO INTERNET
02:31PM 15 ACCESS.

02:31PM 16 MR. COOPERSMITH: SURE.

02:31PM 17 THE COURT: RIGHT. OKAY.

02:31PM 18 MR. COOPERSMITH: OKAY.

02:31PM 19 THE COURT: GREAT. ALL RIGHT.

02:31PM 20 WELL, LET'S JUST CHECK BACK IN, I DON'T KNOW, 30,
02:31PM 21 40 MINUTES, SOMETHING LIKE THAT.

02:31PM 22 MR. COOPERSMITH: YES, YOUR HONOR.

02:31PM 23 MR. SCHENK: THANK YOU.

02:31PM 24 THE COURT: GREAT.

02:31PM 25 (RECESS TAKEN FROM AT 2:31 P.M. PENDING THE DELIBERATIONS

03:51PM 1 OF THE JURY 3:51 P.M.) .

03:51PM 2 (JURY OUT AT 3:51 P.M.)

03:51PM 3 THE COURT: THANK YOU. PLEASE BE SEATED. WE'RE
03:51PM 4 BACK ON THE RECORD IN THE BALWANI MATTER. ALL COUNSEL,
03:51PM 5 MR. BALWANI IS PRESENT.

03:51PM 6 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY. I WAS INFORMED
03:51PM 7 THAT THE JURY INDICATED TO THE CSO THAT THEIR INTENT WAS TO
03:51PM 8 WORK UNTIL 4:00 TODAY.

03:51PM 9 I HAVE -- OUR COURTROOM DEPUTY HAS CONTACTED THE ALTERNATE
03:51PM 10 JUROR AND ASKED HIM TO COME BACK TO COURT.

03:51PM 11 MY THOUGHT WAS THAT WE COULD INVITE JUROR NUMBER 10 OUT
03:52PM 12 NOW AND SPEAK WITH HER ABOUT HER PLANS, AND THEN PROCEED
03:52PM 13 ACCORDINGLY.

03:52PM 14 IF, IN FACT, THE COURT DOES EXCUSE JUROR NUMBER 10, THE
03:52PM 15 INTENT WOULD BE TO SUBSTITUTE ALTERNATE NUMBER 5 FOR HER.

03:52PM 16 AND THEN MY INTENT WOULD BE TO IF WE CAN KEEP OUR JURY,
03:52PM 17 WHICH WOULD PROBABLY BE A LITTLE PAST 4:00, MY INTENT WOULD BE
03:52PM 18 TO READ THEM 6.30, AND THE JURY CAN THEN TAKE THEIR BREAK.

03:52PM 19 ANY THOUGHTS?

03:52PM 20 MR. SCHENK: THANK YOU, YOUR HONOR.

03:52PM 21 THAT PLAN SOUNDS FINE. THE ONLY THING WE WOULD ASK IS
03:53PM 22 THAT THE JURY PAUSE THEIR DELIBERATIONS WHEN WE BRING 10 IN.

03:53PM 23 THE COURT: YES. AND I'D HAVE TO INSTRUCT THEM
03:53PM 24 SOMEHOW TO DO THAT, TO STOP THEIR DELIBERATIONS.

03:53PM 25 MR. SCHENK: SO ONE OPTION, IT MIGHT BE MORE THAN IS

03:53PM 1 NECESSARY, BUT THE COURT COULD BRING THE ENTIRE JURY OUT IF THE
03:53PM 2 ALTERNATE HAS ALREADY ARRIVED, AND IF 10 ASKS TO BE RELIEVED,
03:53PM 3 THE COURT COULD JUST DO THE SWAP. AT THAT POINT THE JURY IS IN
03:53PM 4 THE COURTROOM AND THEY'RE NOT DELIBERATING.

03:53PM 5 MR. COOPERSMITH: IT SOUNDS REASONABLE, YOUR HONOR.

03:53PM 6 THE COURT: RIGHT. I COULD BRING THEM IN AND WE CAN
03:53PM 7 DO THAT. THE CONVERSATION WITH JUROR NUMBER 10 WOULD BE A
03:53PM 8 RECOGNITION OF HER CONFLICT AND THEN EXCUSE HER BASED ON THAT.

03:53PM 9 AND THEN IF OUR ALTERNATE 5 IS HERE, WE CAN SUBSTITUTE IT
03:54PM 10 IN, AND THEN I WOULD READ 6.30. AND I WOULD ASK THE JURY TO
03:54PM 11 RETURN TO THE DELIBERATION ROOM TO CONTINUE DELIBERATIONS BUT
03:54PM 12 THEY CAN AGAIN, I'LL REMIND THEM, YOU CAN SET YOUR SCHEDULE,
03:54PM 13 AND --

03:54PM 14 MR. COOPERSMITH: I'M NOT SURE I FOLLOW THAT LAST
03:54PM 15 POINT, YOUR HONOR. I'M SORRY.

03:54PM 16 THE COURT: WELL, I THINK THEY SHOULD GO BACK TO THE
03:54PM 17 DELIBERATION ROOM. THEY'VE TOLD US THEY WANT TO LEAVE AT 4:00.
03:54PM 18 THIS IS GOING TO KEEP THEM BEYOND 4:00.

03:54PM 19 SO I WOULD SEND THEM BACK SO THE NEW JUROR COULD JOIN
03:54PM 20 THEM, AND THEN THEY CAN LEAVE WHENEVER AFTER THAT.

03:54PM 21 THE NEW JUROR DOESN'T KNOW THEIR SCHEDULE.

03:54PM 22 MR. COOPERSMITH: HE DOESN'T.

03:54PM 23 SO THE NEW JUROR IS GOING TO COME BACK, THE JUROR IS GOING
03:54PM 24 TO BE BROUGHT IN IF THE COURT DOES EXCUSE NUMBER 10, AND THEN
03:54PM 25 THE NEW JUROR WOULD REPLACE, AND YOU'LL READ 6.3 IT SOUNDS

03:55PM 1 LIKE -- INSTRUCTION 6.30, YOUR HONOR.

03:55PM 2 AND THEN WITH ALTERNATE 5 NOW AS PART OF THE JURY WOULD GO

03:55PM 3 BACK TO THE DELIBERATION ROOM.

03:55PM 4 THE COURT: AND THEN THEY CAN LEAVE IF THEY WANT.

03:55PM 5 MR. COOPERSMITH: I SEE.

03:55PM 6 THE COURT: BUT THEY WOULD SET THEIR SCHEDULE THEN

03:55PM 7 AND INFORM THE NEW JUROR OF THEIR SCHEDULE, AND IF HE'S IN

03:55PM 8 AGREEMENT THEN --

03:55PM 9 MR. COOPERSMITH: OKAY. SO THERE'S A CHANCE THAT

03:55PM 10 JUROR NUMBER 5 MIGHT SAY I WANT TO SPEND ALL NIGHT

03:55PM 11 DELIBERATING. I UNDERSTAND.

03:55PM 12 THE COURT: BUT HE SHOULD BE PART OF THAT PROCESS TO

03:55PM 13 KNOW WHEN THEY'VE DECIDED THEY'RE COMING BACK AND ALL OF THAT.

03:55PM 14 HE NEEDS AN INTRODUCTION TO THE TEAM TYPE OF MOMENT.

03:55PM 15 MR. COOPERSMITH: RIGHT.

03:55PM 16 THE COURT: THAT'S WHAT I THOUGHT.

03:55PM 17 MR. COOPERSMITH: AND IS ALTERNATE 5 ON HIS WAY

03:55PM 18 BACK?

03:55PM 19 THE COURT: THAT'S MY UNDERSTANDING.

03:55PM 20 AND THE CSO HAS BEEN ADVISED TO GENTLY TELL THE JURY IF

03:55PM 21 THEY COULD REMAIN FOR JUST A MOMENT.

03:55PM 22 MR. COOPERSMITH: OKAY.

03:56PM 23 I SUPPOSE I COULD BRING THEM OUT, AND WE CAN HAVE THAT

03:56PM 24 DISCUSSION NOW WITH JUROR NUMBER 10, AND THEN THEY WOULD WAIT,

03:56PM 25 AND I WOULD TELL THEM NOT TO DELIBERATE WHILE THEY'RE WAITING.

03:56PM 1 MR. SCHENK: YES, YOUR HONOR. THAT WOULD BE FINE.

03:56PM 2 MR. COOPERSMITH: THAT'S FINE, YOUR HONOR.

03:56PM 3 THE COURT: SURE.

03:56PM 4 (DISCUSSION OFF THE RECORD.)

04:03PM 5 (JURY IN AT 4:03 P.M.)

04:03PM 6 THE COURT: PLEASE BE SEATED. THANK YOU. WE'RE ON

04:03PM 7 THE RECORD IN THE BALWANI MATTER. ALL COUNSEL ARE PRESENT.

04:03PM 8 MR. BALWANI IS PRESENT.

04:03PM 9 OUR DELIBERATING JURY OF 12 ARE PRESENT, AND I SHOULD

04:03PM 10 RECOGNIZE ALTERNATE NUMBER 5 IS ALSO PRESENT.

04:03PM 11 LADIES AND GENTLEMEN, THANK YOU. I HAVE BROUGHT YOU OUT

04:03PM 12 THIS AFTERNOON AT THIS TIME BECAUSE I THOUGHT I WOULD HAVE A

04:03PM 13 CONVERSATION WITH JUROR IS NUMBER 10.

04:03PM 14 JUROR NUMBER 10, I KNOW YOU HAVE INFORMED US THAT YOU HAVE

04:03PM 15 TRAVEL PLANS.

04:03PM 16 JUROR: YES.

04:03PM 17 THE COURT: AND YOU CAN BE SEATED. THANK YOU FOR

04:03PM 18 YOUR COURTESY. WE'LL GET YOU A MICROPHONE.

04:03PM 19 YOU HAVE TOLD US THAT YOU HAVE TRAVEL PLANS FROM JUNE 26TH

04:03PM 20 THROUGH JULY 4TH, I BELIEVE?

04:04PM 21 JUROR: YES.

04:04PM 22 THE COURT: THERE WE ARE. I THINK THAT'S ON NOW.

04:04PM 23 JUROR: YES.

04:04PM 24 THE COURT: YES. THANK YOU.

04:04PM 25 (LAUGHTER.)

04:04PM 1 THE COURT: ALL RIGHT. THANK YOU.

04:04PM 2 AND THOSE TRAVEL PLANS HAVE NOT CHANGED; IS THAT CORRECT?

04:04PM 3 JUROR: YES, CORRECT.

04:04PM 4 THE COURT: ALL RIGHT. SO YOUR PLANS ARE, I BELIEVE

04:04PM 5 IT'S THIS SUNDAY YOU'LL BE GONE THEN?

04:04PM 6 JUROR: YES.

04:04PM 7 THE COURT: AND YOU WOULD NOT THEN OTHERWISE BE ABLE

04:04PM 8 TO CONTINUE YOUR SERVICE ON THE JURY; IS THAT MY UNDERSTANDING?

04:04PM 9 JUROR: WHEN I COME BACK, I CAN CONTINUE.

04:04PM 10 THE COURT: I SEE. BUT YOU WON'T BE ABLE TO COME

04:04PM 11 BACK UNTIL AFTER THE HOLIDAY?

04:05PM 12 JUROR: YES.

04:05PM 13 THE COURT: YES. I SEE.

04:05PM 14 ANY QUESTIONS FROM COUNSEL?

04:05PM 15 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

04:05PM 16 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

04:05PM 17 THE COURT: ALL RIGHT. ANY COMMENT FROM COUNSEL AS

04:05PM 18 TO WHETHER OR NOT THE COURT SHOULD EXCUSE JUROR NUMBER 10 AND

04:05PM 19 PERHAPS REPLACE WITH AN ALTERNATE GIVEN THE SCHEDULE?

04:05PM 20 MR. SCHENK: THANK YOU, YOUR HONOR. NO OBJECTION TO

04:05PM 21 EXCUSING JUROR NUMBER 10 AND REPLACING WITH THE NEXT ALTERNATE.

04:05PM 22 MR. COOPERSMITH: IF THAT IS JUROR NUMBER 10'S

04:05PM 23 REQUEST, WE HAVE NO OBJECTION.

04:05PM 24 THE COURT: ALL RIGHT. THANK YOU.

04:05PM 25 WELL, I THINK I'VE HEARD JUROR NUMBER 10. YOU'VE TOLD US

04:05PM 1 ABOUT YOUR TRAVEL PLANS, JUROR NUMBER 10. AND WHAT I AM GOING
04:05PM 2 TO DO IS I AM GOING TO EXCUSE YOU FROM YOUR JURY SERVICE HERE
04:05PM 3 TODAY. I'M QUITE CONFIDENT THAT DISAPPOINTS YOU. YOU WERE
04:05PM 4 HERE EVERY DAY FOR THE EVIDENCE. YOU'VE HEARD AND
04:05PM 5 PARTICIPATED, I WATCHED YOU, YOU WERE AN ACTIVE PARTICIPANT IN
04:06PM 6 LISTENING, OBSERVING, AND SEEING THINGS.

04:06PM 7 REGRETTABLY, OUR TRIAL WAS DELAYED BY CIRCUMSTANCES OUT OF
04:06PM 8 OUR CONTROL. OUR CURRENT HEALTH SITUATION CAUSED SOME
04:06PM 9 INCONVENIENCE TO US AND DELAYED THE TRIAL, AND THE COURT FINDS
04:06PM 10 THAT IT WOULD BE APPROPRIATE AT THIS TIME TO THANK AND EXCUSE
04:06PM 11 YOU IN AN EFFORT TO ALLOW YOU TO HAVE YOUR VACATION PLANS
04:06PM 12 UNINTERRUPTED AS YOU HAVE THEM PLANNED, AND THEN WE COULD USE A
04:06PM 13 SUBSTITUTE OR ALTERNATE JUROR TO SUBSTITUTE AND SIT IN YOUR
04:06PM 14 PLACE.

04:06PM 15 WOULD THAT BE ALL RIGHT WITH YOU, JUROR NUMBER 10?

04:06PM 16 JUROR: YES. THANK YOU.

04:06PM 17 THE COURT: YOU'RE VERY WELCOME. THANK YOU VERY
04:06PM 18 MUCH.

04:06PM 19 AND I WANT TO THANK YOU FOR YOUR SERVICE, YOUR COMMITMENT
04:06PM 20 TO YOUR JUSTICE SYSTEM FOR COMING AND SITTING.

04:06PM 21 JUROR: YOU'RE WELCOME.

04:06PM 22 THE COURT: THANK YOU. AND ON BEHALF OF THE LAWYERS
04:06PM 23 I THANK YOU AS WELL.

04:06PM 24 JUROR: YOU'RE WELCOME. MY PLEASURE.

04:07PM 25 (LAUGHTER.)

04:07PM 1 THE COURT: AND LET ME JUST ASK, BEFORE -- SO I WILL
04:07PM 2 EXCUSE JUROR NUMBER 10. JUROR NUMBER 10 IS EXCUSED.

04:07PM 3 THAT ALSO MEANS THAT THE ADMONITION THAT I'VE PLACED, THAT
04:07PM 4 NO LONGER APPLIES TO YOU. YOU NO LONGER HAVE THE ADMONITION
04:07PM 5 ABOUT DISCUSSING THINGS.

04:07PM 6 HOWEVER, IT'S ENTIRELY UP TO YOU WHETHER OR NOT YOU WISH
04:07PM 7 TO DISCUSS ANYTHING WITH ANYONE, ANYTHING ABOUT YOUR SERVICE
04:07PM 8 WITH ANYONE.

04:07PM 9 IF YOU DO NOT WISH TO DISCUSS YOUR SERVICE WITH SOMEONE,
04:07PM 10 YOU DO NOT HAVE TO DO SO. IF ANYONE APPROACHES YOU TO ASK YOU
04:07PM 11 QUESTIONS AND YOU CHOOSE NOT TO TALK WITH THEM, YOU SHOULD TELL
04:07PM 12 THEM NO.

04:07PM 13 ON THE OTHER HAND, IF YOU WANT TO TALK, YOU CAN DISCUSS
04:07PM 14 THINGS WITH THEM. I WOULD CAUTION YOU, THOUGH, TO -- ABOUT
04:07PM 15 DISCUSSING THINGS THAT WERE DISCUSSED IN THE DELIBERATIONS THAT
04:07PM 16 YOU HAD. I WOULD -- THE DELIBERATIONS, AS YOU KNOW, ARE
04:08PM 17 CONFIDENTIAL AND THE THINGS THAT ARE DISCUSSED IN THE
04:08PM 18 DELIBERATION ROOM WITH YOUR COLLEAGUE JURORS, THAT'S ALL
04:08PM 19 CONFIDENTIAL. SO I WOULD ENCOURAGE YOU TO THINK ABOUT THAT
04:08PM 20 WHEN YOU'RE ASKED. IF YOU ARE ASKED AND YOU SAY NO TO SOMEONE,
04:08PM 21 YOU DON'T WANT TO SPEAK TO THEM AND YOU FEEL THAT THAT PERSON
04:08PM 22 OR PERSONS CONTINUE TO NOT RESPECT YOUR WISHES, YOU SHOULD
04:08PM 23 REPORT ANY SUCH CONDUCT TO THE COURT FOR FURTHER -- SO THE
04:08PM 24 COURT COULD INVESTIGATE AND DO ANY OTHER ACTION AS NEEDED.

04:08PM 25 DO YOU UNDERSTAND THAT?

04:08PM 1 JUROR: YES. I WILL NOT TALK TO ANYONE UNTIL THE
04:08PM 2 CASE DELIBERATES.

04:08PM 3 THE COURT: THANK YOU.

04:08PM 4 JUROR: YOU'RE WELCOME.

04:08PM 5 THE COURT: THANK YOU VERY MUCH ABOUT YOUR
04:08PM 6 STATEMENT. THE WORLD NOW KNOWS YOUR FEELINGS. THANK YOU FOR
04:08PM 7 THAT.

04:08PM 8 ALTERNATE NUMBER 5, THANK YOU FOR RETURNING ON SUCH SHORT
04:08PM 9 NOTICE. I'M GRATEFUL FOR THAT.

04:09PM 10 MY INTENT, WITH CONSENT OF COUNSEL, IS TO SUBSTITUTE YOU,
04:09PM 11 SIR, INTO THE DELIBERATING JURY, IN PLACE OF ALTERNATE
04:09PM 12 NUMBER 10.

04:09PM 13 FIRST, I HAVE A QUESTION OF YOU, AND I KNOW THIS QUESTION
04:09PM 14 WILL BE OF A COMPLETE SURPRISE TO YOU.

04:09PM 15 DURING THE TIME THAT YOU LEFT THE COURTROOM HERE AND THE
04:09PM 16 TIME THAT YOU'VE RETURNED NOW, DID YOU HAVE OCCASION, SIR, TO
04:09PM 17 READ, DISCUSS, OR TALK WITH ANYONE OR LEARN ANYTHING ABOUT THIS
04:09PM 18 CASE?

04:09PM 19 JUROR: NO.

04:09PM 20 THE COURT: ALL RIGHT. THANK YOU, SIR.

04:09PM 21 ANY OBJECTION THEN TO THE COURT SUBSTITUTING ALTERNATE
04:09PM 22 NUMBER 5 IN TO REPLACE JUROR NUMBER 10?

04:09PM 23 MR. SCHENK: NO OBJECTION.

04:09PM 24 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

04:09PM 25 THE COURT: ALL RIGHT. SIR, YOU'LL THEN BE SEATED.

04:09PM 1 YOU'RE PART OF THE JURY NOW.

04:09PM 2 LADIES AND GENTLEMEN, I DO HAVE TO READ YOU AN INSTRUCTION
04:09PM 3 THAT TALKS ABOUT THIS CIRCUMSTANCE. AS YOU ALL KNOW, LADIES
04:09PM 4 AND GENTLEMEN, I HAVE JUST SUBSTITUTED AN ALTERNATE JUROR,
04:09PM 5 ALTERNATE NUMBER 5, FOR JUROR NUMBER 10.

04:10PM 6 NOW, YOU MUST START YOUR DELIBERATIONS ANEW. THIS MEANS
04:10PM 7 YOU SHOULD DISREGARD ENTIRELY ANY DELIBERATIONS TAKING PLACE
04:10PM 8 BEFORE THE ALTERNATE JUROR WAS SUBSTITUTED AND CONSIDER FRESHLY
04:10PM 9 THE EVIDENCE AS IF THE PREVIOUS DELIBERATIONS HAD NEVER
04:10PM 10 OCCURRED.

04:10PM 11 ALTHOUGH STARTING OVER MAY SEEM FRUSTRATING, PLEASE, DO
04:10PM 12 NOT LET IT DISCOURAGE YOU.

04:10PM 13 IT IS IMPORTANT THAT EACH JUROR HAVE A FULL AND FAIR
04:10PM 14 OPPORTUNITY TO EXPLORE HIS OR HER VIEWS AND RESPOND TO THE
04:10PM 15 VIEWS OF OTHERS SO THAT YOU MAY COME TO A UNANIMOUS VERDICT.

04:10PM 16 ALL THE PREVIOUS INSTRUCTIONS GIVEN TO YOU, INCLUDING THE
04:10PM 17 UNANIMITY REQUIREMENT FOR A VERDICT, REMAIN IN EFFECT.

04:10PM 18 COUNSEL, ANY ADDITIONAL INSTRUCTION YOU WISH THE COURT TO
04:10PM 19 GIVE?

04:10PM 20 MR. SCHENK: NO. THANK YOU.

04:11PM 21 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

04:11PM 22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

04:11PM 23 SO WHAT THIS MEANS, LADIES AND GENTLEMEN, WHAT I'M GOING
04:11PM 24 TO DO IS TO INVITE YOU TO GO BACK TO THE DELIBERATION ROOM WITH
04:11PM 25 YOUR NEW JUROR.

04:11PM 1 I KNOW YOU HAVE YOUR SCHEDULES SET, AND I'M NOT GOING TO
04:11PM 2 DISRUPT YOUR SCHEDULE. YOU ARE FREE TO SCHEDULE THE TIME THAT
04:11PM 3 YOU ARE GOING TO MEET TODAY. I UNDERSTAND I'VE KEPT YOU BEYOND
04:11PM 4 THAT TIME NOW.

04:11PM 5 BUT IF YOU WOULD GO BACK WITH YOUR NEW COLLEAGUE JUROR AND
04:11PM 6 JUST MEET FOR HOWEVER LONG YOU WANT TODAY, AND THEN WE'LL SEE
04:11PM 7 YOU BACK ON MONDAY AT THE TIME THAT YOU LET US KNOW YOU'RE
04:11PM 8 BACK, THAT WOULD BE FINE.

04:11PM 9 ANYTHING FURTHER, COUNSEL?

04:11PM 10 MR. COOPERSMITH: NO, YOUR HONOR.

04:11PM 11 MR. SCHENK: NOTHING FURTHER.

04:11PM 12 THE COURT: ALL RIGHT. THANK YOU.

04:11PM 13 JUROR NUMBER 10, THANK YOU VERY MUCH. IT'S A PLEASURE
04:11PM 14 MEETING YOU. THANK YOU VERY MUCH.

04:11PM 15 AND YOU CAN -- DO YOU HAVE THINGS IN THE DELIBERATION
04:11PM 16 ROOM?

04:11PM 17 JUROR: YES.

04:11PM 18 THE COURT: ALL RIGHT. I THINK OUR COURTROOM DEPUTY
04:11PM 19 CAN SECURE THOSE FOR YOU AND HAND THOSE TO YOU, AND THEN THE
04:12PM 20 REMAINING JURORS WOULD GO BACK, AS I SAID, JUST TO CONFIRM YOUR
04:12PM 21 SCHEDULE WITH YOUR NEW COLLEAGUE, PLEASE.

04:12PM 22 THAT MEANS YOU CAN JOIN THEM, ALTERNATE 5. YOU'RE NOW
04:12PM 23 JUROR NUMBER 10.

04:12PM 24 (JURY OUT AT 4:12 P.M.)

04:12PM 25 JUROR: SO I STAY HERE?

04:12PM 1 THE COURT: WELL, YOU KNOW, I THINK YOU CAN WALK
04:12PM 2 BACK AND OUR COURTROOM DEPUTY -- OF COURSE DON'T GO IN THE
04:12PM 3 ROOM, BUT IF YOU WAIT IN THE HALLWAY, SHE'LL BRING YOUR ITEMS
04:12PM 4 OUT IF YOU IDENTIFY THEM. SO THANK YOU VERY MUCH. THANK YOU
04:12PM 5 SO MUCH.

04:12PM 6 JUROR: SURE.

04:12PM 7 THE COURT: PLEASE BE SEATED. THANK YOU, COUNSEL.

04:12PM 8 (JURY OUT AT 4:12 P.M.)

04:13PM 9 THE COURT: ALL RIGHT. THE RECORD SHOULD REFLECT
04:13PM 10 THAT THE JURY HAS LEFT THE COURTROOM.

04:13PM 11 COUNSEL, ANYTHING FOR THE RECORD BEFORE WE END FOR THE
04:13PM 12 DAY?

04:13PM 13 MR. SCHENK: JUST A BRIEF COMMENT, YOUR HONOR.

04:13PM 14 I NOTICE AT LEAST WHAT I TOOK AS A MEASURE OF SURPRISE BY
04:13PM 15 THE JURY WHEN YOUR HONOR SAID YOU'LL COME BACK MONDAY.

04:13PM 16 WE HAVEN'T BEEN MEETING ON MONDAYS FOR TRIAL, SO I JUST
04:13PM 17 WONDER IF THE JURY, AS PART OF SETTING THEIR OWN SCHEDULE,
04:13PM 18 PLANS TO KEEP TRIAL DAYS OR PLANS TO GO FIVE DAYS A WEEK. I
04:13PM 19 WONDER IF WE'LL HEAR SOMETHING.

04:13PM 20 THE COURT: WE TOLD THEM TO LET US KNOW THEIR
04:13PM 21 SCHEDULE. IT IS -- I SUPPOSE THEY WERE SURPRISED BECAUSE THEY
04:13PM 22 WERE USED TO OUR TUESDAY, WEDNESDAY, THURSDAY SCHEDULE, BUT
04:13PM 23 THEY'RE FREE TO COME ON MONDAY AND DELIBERATE.

04:13PM 24 MR. COOPERSMITH: I WOULD BE DELIGHTED IF THEY DID,
04:13PM 25 YOUR HONOR.

04:13PM 1 THE COURT: RIGHT. I DON'T WANT TO DISCOURAGE THEM
04:13PM 2 OR DISRUPT THAT.

04:13PM 3 MR. COOPERSMITH: RIGHT.

04:13PM 4 MR. SCHENK: AGREED.

04:13PM 5 THE COURT: THANK YOU. WE'LL HEAR WHAT WE HEAR.

04:14PM 6 MR. SCHENK: THANK YOU, YOUR HONOR.

04:14PM 7 THE COURT: ALL RIGHT. THANK YOU. HAVE A GOOD
04:14PM 8 WEEKEND. THANK YOU.

04:14PM 9 MR. SCHENK: THANK YOU.

04:14PM 10 MR. BOSTIC: THANK YOU, YOUR HONOR.

04:31PM 11 (RECESS TAKEN PENDING THE DELIBERATIONS OF THE JURY AT
04:31PM 12 4:14 A.M.)

04:31PM 13 THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL
04:31PM 14 ARE PRESENT. MR. BALWANI IS PRESENT.

04:31PM 15 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

04:31PM 16 THE JURY PASSED A NOTE. UNFORTUNATELY, IT'S NOT ON A
04:31PM 17 REGULAR FORMAL NOTE PAPER. THE NOTE WAS ON A POST IT, AND
04:31PM 18 WE'LL PUT THAT IN THE FILE.

04:31PM 19 BUT I'VE GIVEN PHOTOCOPIES OF THE NOTE REGARDING THE
04:31PM 20 JURY'S PROPOSED SCHEDULE, THAT'S WHAT THEY GAVE US, AND YOU
04:31PM 21 HAVE THAT FOR YOUR INFORMATION. IT'S A SCHEDULE FOR THE NEXT
04:31PM 22 COUPLE OF WEEKS IT LOOKS LIKE OR THROUGH NEXT WEEK AND THE WEEK
04:31PM 23 AFTER.

04:31PM 24 ANY COMMENTS? ANYTHING?

04:31PM 25 MR. SCHENK: NO. THANK YOU.

04:31PM 1 MR. COOPERSMITH: NO, YOUR HONOR. THE ONLY THING
04:31PM 2 I'LL SAY IS IT'S FINE. THE ONLY SURPRISE IS FOR SOME REASON I
04:32PM 3 THOUGHT JULY 5TH WAS A DATE THAT SOMEONE WAS OUT, BUT IT LOOKS
04:32PM 4 LIKE THEY'VE RESOLVED IT.

04:32PM 5 THE COURT: YES, IT LOOKS LIKE IT.

04:32PM 6 OKAY. ANYTHING FURTHER?

04:32PM 7 MR. COOPERSMITH: NO, YOUR HONOR. HAVE A NICE
04:32PM 8 WEEKEND. THANK YOU.

04:32PM 9 THE COURT: YOU AS WELL. THANK YOU.

04:32PM 10 (COURT ADJOURNED AT 4:32 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JUNE 24, 2022